93-713

CASE NO. _____

Supreme Court, U.S.
FILED
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IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1993

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GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

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ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

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# APPENDIX
# VOLUME TWO

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## VOLUME SIX

For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

## DOCUMENT 10

### Preservation of Federal Objections

This document is composed of excerpts from:

1. The transcripts of the Trial Proceedings (A 214);

2. The transcripts of the Pre-trial Conference (A 308);

3. The Petitioner's Show Cause Response (A 327);

4. The Petitioner's Second Amended Motion to Dismiss (A 330);

5. The Petitioner's Reply to Commissions Reply (A 334);

6. The Petitioner's 4th Amended Motion to Dismiss (A 337) [reprinted more fully at A 800]; **Note**: Petitioner's Affirmative Defenses are not reprinted here because they are set forth in full in this excerpt of Petitioner's 4th Amended Motion to Dismiss.

7. The transcripts of the Petitioner's Rule 6(b) Hearing Before the JQC (A 349).

Petitioner's 4th Amended Motion to Dismiss is fundamentally the same as his First through Third Motions, with certain corrections and expansions. Those motions in their entirety will be available to the Court if and when the full record is brought forward for review.

Where the objections to the proceedings initially fail to specifically state that they are based on Federal grounds they were renewed on the basis of the United States Constitution at pages 1951 and 2144 of the proceedings and pages 322 of the Petitioner's Show Cause Response. (A 286, A 288, A 329)

At page 232 of the proceedings the JQC granted Petitioner a continuing objection to the proceedings based on federal due process grounds. (A 235)

**Excerpts**

**from**

**The Transcription of the Trial Proceedings**

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* * *

JUDGE GRAHAM: You will not allow me to address this issue before the ruling is made?

THE CHAIRMAN: The ruling has taken

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place.

JUDGE GRAHAM: I would object on the basis of due process of law. The Chairman of this Commission has just made a ruling that is going to affect the evidence in this case. If I understand it correctly, it's going to allow percipient witnesses, these newspaper reporters -- I was going to call them as percipient --

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* * *

THE CHAIRMAN: Your request is denied. Is there any further argument in reference to the presence of the lawyers during the presentation of evidence --

JUDGE GRAHAM: I would object to your ruling.

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THE CHAIRMAN: -- I mean of the reporters. Of the reporters.

JUDGE GRAHAM: Excuse me. I object to your ruling on the basis that it denies me my fundamental right to a fair hearing that you folks are now going to go to discuss the case; when you discuss the case and discuss the merits of these matters which have been brought up and argued without notice of a hearing, without me being able to be prepared for the argumentation on any of these issues; and that when you discuss it and bring up issues of law or fact, I will not be there, able to defend myself and tell the other side of the story and present findings of law.

THE CHAIRMAN: All right. Judge Graham --

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: -- your objection is noted.

JUDGE GRAHAM: My objection is not finished.

THE CHAIRMAN; Judge, your objection is noted.

JUDGE GRAHAM: Will you not let me finish



my objection?

THE CHAIRMAN: I would ask that the Commission -- and we will be back shortly.

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* * *

Any other matters to be brought before our attention?

JUDGE GRAHAM: Yes. I'd like to argue my motion to disqualify the Commission.

THE CHAIRMAN: That has been ruled on, and we will hear no further argument on that.

JUDGE GRAHAM: May I note for the record

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that it was ruled on without allowing me to argue its merits?

THE CHAIRMAN: So noted.

JUDGE GRAHAM: And I would object on the grounds that you have violated my due process rights under the federal and state constitutions.

* * *

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JUDGE GRAHAM: I would make a motion to disqualify Mr. William C. Clark.

THE CHAIRMAN: And your grounds, sir?

JUDGE GRAHAM: Which one is Mr. Clark?

THE CHAIRMAN: Mr. Clark is the gentleman in the blue suit. What is your --

JUDGE GRAHAM: Good morning, Mr. Clark.

THE CHAIRMAN: -- grounds for the motion for disqualification?

JUDGE GRAHAM: Okay. This is based on a constitutional argument. It's a fundamental error -- I believe fundamental error in the rules itself. Mr. Seth Dennis recused himself. It can only be presumed that he felt some type of bias or prejudice either for or against me. I do not know. I don't know, because the Commission would not let me take his deposition. Now, here's a fellow who is either prejudiced or against me -- Mr. Seth Dennis -- and yet, after he recuses himself -- under Rule 26, promulgated by the Florida Supreme Court pursuant to the constitution of the State of Florida, "The Commission shall make ad hoc appointments of a person or persons to take the

place of a member or members of the Commission so disqualified, but each member so disqualified may participate in the action of the Commission in making his appointment."

So that means that, pursuant to the rule, the person who says, "I'm biased or prejudiced against the judge," gets to participate in choosing a member to replace him. Now, that is fundamentally unfair, and it's a violation of my due process rights guaranteed by both the state and federal constitution.

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JUDGE GRAHAM: Yes, I would make a motion to renew my -- actually, I would make a motion for a hearing -- not a rehearing but a hearing -- on my motion for a pretrial conference, and I would like to argue the merits of having a hearing on it.

THE CHAIRMAN: there's no necessity for argument. The motion is denied for a pretrial hearing at this time.

JUDGE GRAHAM: At this time, I would cite to the Commission the opinion of --

THE CHAIRMAN: Judge, is this in reference to my ruling just now?

JUDGE GRAHAM: Yes. I would like to state an objection--

THE CHAIRMAN: I will not take any further comment on that, Judge. Please proceed.

JUDGE GRAHAM: I would like to -- may I preserve my record on appeal?

THE CHAIRMAN: You can make your proffer



at a time later, when the Commission is not here. I have ruled on that. There is not going to be any further argument. Please proceed.

JUDGE GRAHAM: All right. I don't understand, because -- this is so unusual that I don't understand it. I think I am being told that I cannot establish a record on appeal by citing the case that says you must listen to my arguments.

THE CHAIRMAN: Please proceed, Judge. Do you have anything else to present to the Commission before I have opening statements made?

JUDGE GRAHAM: Yes. I would like a motion to -- for a rehearing on my second amended motion to dismiss. The basis for this is as follows --

THE CHAIRMAN: Judge, that is out of order at this time.

JUDGE GRAHAM: Excuse me, but I --

THE CHAIRMAN: It is out of order at this time, and I will not take an argument on that.

JUDGE GRAHAM: Let the record reflect that my second amended motion to dismiss has



never been noticed or heard -- that is a speaking motion -- that the Commission did not allow me to call witnesses to prove the factual basis of the motion; and that counsel for the JQC filed a response to the motion stating that it contained false allegations; and that the appellate court on appeal, are going to be in a quandary, because -- with issues of fact left unresolved, there is more than just a issue of law to be decided by the Commission with respect to this complicated, 58-page motion to dismiss.

THE CHAIRMAN: Judge Graham, I have ruled on that. I'll ask you to proceed, please.

JUDGE GRAHAM: I'm stating this for the record.

THE CHAIRMAN: You have stated your point. I want you to proceed. You've made your point clear. Please proceed with

any other matter you want to bring before we begin opening statements.

JUDGE GRAHAM: Is it my understanding that I cannot state Robert -- Charles versus State of Florida?

THE CHAIRMAN: I have ruled on the

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matter, Judge. Pease proceed.

JUDGE GRAHAM: I would ask for a mistrial based on the ex parte communications that the Commission has had regarding my case.

* * *

I was going to go by them one by one to establish a record on appeal just how egregious the Commission's conduct and denial of my due process rights have been.

You noticed it took me perhaps two minutes to try to find my file, and you interrupted me. I would state -- at this time, I would renew my motion for a continuance. I would bring to your attention --

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* * *

JUDGE GRAHAM: The Commission kept me doing a dance answering to three separate stages of pleadings. First they charged me with eight charges. Before I could get ready for the 6B hearing on eight charges, they



informed me there would be another 21. Before I could finish getting ready for the 6B hearing on the 21 and while I was still preparing for the 6B hearing on the 21, they sent me a notice of -- that they were going to investigate -- excuse me. I might be getting this incorrect, and the reason I am getting it incorrect is because I have not been able to prepare.

In any event, they constantly had me either preparing for a 6B hearing and simultaneously preparing complex motions to dismiss or answers and affirmative defenses at the times that I was answering -- doing my motions to dismiss on the first or second waves. And until the close of pleadings, I was completely tied up with very complex issues of pleading and law.

December 30th -- that's 27 days ago -- the pleadings closed. I then started taking depositions. I've been in depositions sometimes 14

hours a day. I'm going to state for the record what I've been doing since January 30th.

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* * *

JUDGE GRAHAM: I am trying to point out that the Commission has proceeded against me in a fashion which has made it completely impossible for me to organize, prepare, and provide an adequate and good defense to these charges; that these are -- while the charges are trivial, including stating that you can't separate morality from the law, the issues of this proceeding are extremely important. This commission has proceeded as if this is some type of -- honestly, like a small claims case.

I have been a lawyer for ten years --

THE CHAIRMAN: Judge, may I --

MR. BOSTIC: Your Honor, we are -- Mr. Chairman, we are hearing the motion to continue over again, which has been denied twice and rejected by the Supreme Court.

THE CHAIRMAN: Judge Graham, if the basis of what you're doing is for a motion for continuance -- which you've stated on the record -- I do not have to have further argument on it.

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* * *

JUDGE GRAHAM: I have a motion to disqualify which came to my attention at the end of the break. It has to do with Mr. Kaney, and it is a speaking motion.

THE CHAIRMAN: Are you speaking of Judge Kaney?

JUDGE GRAHAM: This fellow right here.

THE CHAIRMAN: Judge Kaney is the vice chair of this Commission.

JUDGE GRAHAM: Are you Judge Kaney? I would call -- is Jim Ross here? Step forward.

THE CHAIRMAN: Hold it. Judge, I don't think this is proper now, and I'm not going to

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take any testimony at this time.

JUDGE GRAHAM: Excuse me. This is a speaking motion that goes to the disqualification of this individual.

THE CHAIRMAN: State your grounds for the -- please do not be making comments to the Commissioners. Make your comments --

JUDGE GRAHAM: I'm not making comments. I was just indicating the individual.

THE CHAIRMAN: Make your comments to me, Judge. What is the grounds for the disqualification?

JUDGE GRAHAM: The grounds is that when I have not been looking, I have been told by several individuals that this individual of the Commission has been making nonverbal communications to the Commissioner, asking you to cut me short, shaking yes, shaking no, and otherwise indicating things to you. And Mr. Ross has verified this to one of my assistants. I would like to call Mr. Ross and have him verify this to form the basis of my motion.

THE CHAIRMAN: Your motion to disqualify is denied. Your motion to have testimony presented is denied. We are going to proceed

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with the opening statements now.

JUDGE GRAHAM: I object to this on the basis of both my federal and state due process rights to make an argument, to present facts, and to make the motion to disqualify.

THE CHAIRMAN: I am allowing 30 minutes to each side. I will remind counsel and Judge Graham that this is what the evidence intends to prove to be shown in the case. I will ask that there not be argument made.

Mr. Bostic and -- Ms. Clerk, who is keeping the time down there? Is someone keeping a clock?

THE CLERK: I am.

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* * *

I will state for the record there is no way I can make a reasonable opening statement on 41 charges, almost half a hundred charges of unethical conduct, in 30 minutes. This is just another denial of my fundamental rights under the federal constitution of due process of law.

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I think that I have an absolute right to view a document before it's introduced into evidence. It's just -- with all due respect, Mr. Chairman, it's incredible to me. I have never, ever in a court of law seen a document introduced into evidence without allowing the opposing party to look at it before it was introduced.

THE CHAIRMAN: You can certainly look at it, Judge, but we are not going to sit here for three, four, five minutes while you calmly go through each and every item in those documents and look at them when this should have been done before. And that was in my pretrial order for you people to look at your exhibits, and it was not done, apparently.

JUDGE GRAHAM: Excuse me. I think I should address that pretrial order. I think it was called "In Re Order" -- "In Re" --

MR. BOSTIC: Order In Re: Trial.

JUDGE GRAHAM: Order In Re: Trial. This was an order received without -- no one moved for this order. This order was made, I can only presume or understand, sua sponte by the Chairman or whoever signed it. And I received it



in the middle of an extremely busy deposition docket where I'm trying to discover the facts of this case, and I have had no opportunity whatsoever -- no ability to comply with that order.

And then to bootstrap that and say, Okay. Because you couldn't comply with an order that we threw on you three or four days before trial when you were in the middle of 14-hour-a-day

depositions trying to discover the facts of the case, we're not even going to allow you to look at the documents before we introduce them into evidence," is an error of law and a denial of my fundamental rights protected by both the federal and the state constitution.

MR. BOSTIC: Your Honor, I don't believe it is an error or law. I don't believe it is a violation of his rights. I believe the Commission has the absolute right to enter an order. I --

THE CHAIRMAN: I don't need argument. The order has been entered, and that will suffice. Please proceed.

* * *

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THE CHAIRMAN: All right. Pursuant to Florida Statute 90.202, I have the right to take judicial notice of the records of any court of this state, and I am now so doing on those exhibits that have been brought here. And I would ask Mr. Bostic to identify the exhibits, and they will be judicially noticed and put into evidence.

MR. BOSTIC: Your Honor, Exhibit --

JUDGE GRAHAM: Excuse me. May I respond?

THE CHAIRMAN: Excuse me, Mr. Bostic. Let Judge Graham respond.

JUDGE GRAHAM: First of all, I object to the fact that the Chairman, exercising a quasi-judicial role, has sent General Counsel on an errand to do something for him, and I would request that the Chair disclose on the record what the request was.

THE CHAIRMAN: Your request is denied.

JUDGE GRAHAM: I object. It's the equivalent of a judge asking opposing --

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THE CHAIRMAN: Judge, I am not going to take any more argument on this issue. Are you going to respond to my notice of taking judicial notice --

JUDGE GRAHAM: Yes.

THE CHAIRMAN: -- of those --

JUDGE GRAHAM: I would ask to see the statute book on judicial notice. You were reading from it.

THE CHAIRMAN: Florida Statute 90.202, Subsection 6.

JUDGE GRAHAM: May I see that, please?

THE CHAIRMAN: Sure.

JUDGE GRAHAM: Okay. If you will read in 90.203, for judicial notice under 90.202, which the Chair has indicated that the Commission is operating under -- "A court shall take judicial notice of any matter in Section 90.202" -- your Subparagraph 6 -- "when a party requests it and gives each adverse party timely written notice of the request, proof of which is filed with the court, to enable the adverse party to prepare to meet the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter."

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There has been no written notice of this request, and therefore, it is inappropriate to take judicial notice of it.

THE CHAIRMAN: your objection is noted, and your objection is denied.

JUDGE GRAHAM: I will --

THE CHAIRMAN: Please identify the exhibits. I am not going to spend any more time on this, Judge Graham.

JUDGE GRAHAM: Okay. I want to make a different objection.

THE CHAIRMAN: No. I am not going to hear any more objections. You've made your objections; I've ruled on it. Please move forward in entering the exhibits.

This is from the clerk's office. These are circuit court files--

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: -- or county court files.

MR. BOSTIC: Yes, sir. County court files or county court tapes.

THE CHAIRMAN: Please identify them. And before you do that, I want to reconvene the Commission, and I'll ask that the Commission be brought back in.

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JUDGE GRAHAM: May I preserve a federal due process objection for the record, Mr. Chairman?

THE CHAIRMAN: Judge Graham, you can preserve any objection you want.

JUDGE GRAHAM: I hereby object to the Chairman's ruling. It is a blatantly clear violation of the rule of law. That rule of law was designed to allow litigants to prepare to meet the matters judicially noticed.

I was given absolutely no notice that these things were going to be judicially noticed. If they were given to me, I'm unaware of it. I believe these documents were the ones that Mr. Bostic threw down on the floor over here just before the trial.

MR. BOSTIC: Mr. Chairman, I threw --

JUDGE GRAHAM: And this is a --

MR. BOSTIC: Excuse me. I threw nothing on the floor before the trial.

JUDGE GRAHAM: And I claim this to be yet another fundamental violation of my due process of law rights protected by both the state and federal constitution.

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COMMISSIONER DEMERS: Excuse me. I'm a

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little confused. I thought Exhibit 31 was State v. Hodge.

MR. BOSTIC: I'm sorry. It's 39. It's my poor handwriting. It's Exhibit 39. Excuse me.

JUDGE GRAHAM: May I make an objection now or --

THE CHAIRMAN: On what point, Judge? If it's a point you've already stated, you don't have to --

JUDGE GRAHAM: This is a new point. This just shows up the fundamental due process rights of having the investigator, the trier of the facts, and the individual charged with determining the law all wrapped up into one Commission. We are presented here with the almost bizarre case of the triers of fact talking to their attorney, correcting him in the presentation of his case. It's just completely -- I feel like I'm on Mars or something.

THE CHAIRMAN: What is your objection, Judge?

JUDGE GRAHAM: The objection is that the trier of the facts is discussing the case with



the attorney that is opposing me and correcting him, and I would move for a mistrial based on that.

THE CHAIRMAN: Your motion for a mistrial is denied.

* * *

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* * *

JUDGE GRAHAM: Because I want to preserve a record on appeal for the federal courts to show that there is a total lack of due process in this proceeding.

THE CHAIRMAN: Then you have a continuing objection, and I will so rule that you would have asked the question of this witness on

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* * *

JUDGE GRAHAM: May I respond to his last statement?

THE CHAIRMAN: Only as to the offer of the -- Exhibits 14, 15, and 33.

JUDGE GRAHAM: Okay. I object on the same basis as I did previously. I object to not being able to argue them. And I would share with the Commission that no one disdains all the objections that I have to make right now more than myself. I would hope that --

THE CHAIRMAN: Judge, that is a speaking objection. If you'll just state your legal grounds on your objection, please.

JUDGE GRAHAM: I object that I am not being allowed -- that I'm being accused of somehow wasting the Commission's time for making objections which would not be necessary if we proceeded in an orderly, due process fashion.

* * *

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MR. BOSTIC: Twenty-one pages.

COMMISSIONER KANEY: Thank you.

JUDGE GRAHAM: I would object for the record that the prosecutor, who was hired by the trier of fact, is discussing the case with the trier of fact, who is also asking questions of the trier of law.

THE CHAIRMAN: Judge, I have no idea what you just said.

JUDGE GRAHAM: What?

THE CHAIRMAN: I have no idea what you just said.

JUDGE GRAHAM: What I'm saying is: You decide the issues of law, they decide the issues of fact, he prosecutes me, and he's your employee, and he's your employee, and you're all discussing this case like it's a roundtable or something --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- and that is a denial of due process.

* * *

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JUDGE GRAHAM: You promised at the end that I could make this due process argument.

THE CHAIRMAN: All right. You can make it to the record. It is not necessary for the Commissioners -- because it's proffer -- for them to listen to it, because I've ruled on it.

Well, they want to stay and listen to your due process argument. Then we'll have everybody stay here for whatever purpose.

JUDGE GRAHAM: I brought to your attention the motion --

THE CHAIRMAN: This is a proffer into the record now. Is that correct?

JUDGE GRAHAM: This is a proffer to my due process objection based on the fact that the Commission is hearing motions ex parte and without notice and without a hearing, because I stated -- back when I was complaining about the motion to unseal records, I said that this thing has been going on routinely. Mr.

Bostic stood up and he said, "No, it's not." And I wanted to share with the Commission and the record two transcripts, and I'm going to read

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from them.

January 12th, the deposition of Tommy Blackman. "And your telephone number" --

THE CHAIRMAN: One second. One second. This court has not adjourned, and I would ask that that door be closed and that people not be entering and leaving the courtroom until Judge Graham has completed. But if you want to leave the room, please do it quietly.

Go ahead, Judge Graham. I apologize.

JUDGE GRAHAM: "And your telephone number is?"

Mr. Blackman's answer: "I have filed an objection and motion for protective order, Your Honor. I was advised by -- I believe it's -- Brooke Kennerly that the protective order has been granted."

Question by me: "Did you file a motion for protective order?"

Mr. Blackman: "Yes. That's what I handed you earlier, a copy of it."

"Earlier? What do you mean earlier?"

"Just then."

Question: "Just now?"

Answer: "Yes. Just now."

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Question: "Okay. Now, this isn't an objection for a -- a motion for protective order, is it?"

"It's an objection and a motion for protective order."

Question by me: "So I am just receiving this motion for protective order. Correct?"

Answer: "Correct. We had it faxed around 12:45 to 1:00."

12:45 to 1:00 Mr. Blackman faxed his motion.

"To who?"

"I believe the fax went to the Clerk of the Circuit Court."

"So you faxed a copy of this motion at what time?"

"12:46 p.m. today, January 12th."

Question: "When I was at lunch and in a building that was a block from here?"

"My understanding was it was the closest fax machine."

"I understand. A block from this building?"

Answer: "Yes, sir."

Question: "You faxed this motion to a



fax machine a block away from this building, where I wasn't even located, wasn't in at the time, because I was at lunch?"

Answer: "We faxed it to the nearest fax machine in the court system."

Question: "Okay. And I'm actually receiving it now, at a quarter to three in the afternoon?"

Answer: "That's your copy, yes."

"And you're advising me that Brooke Kennerly has told you it has already been granted?"

Answer: "Only as to the income tax."

"And she advised you that it had been granted?"

"Correct. I spoke with her this afternoon."

"And you faxed this motion to her also?"

"Correct."

"What time did you fax it to her?"

Answer: "Shortly or some time before we faxed it to you."

"What time exactly?"

"I have a fax to the Supreme Court at 11:47."

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"When did Ms. Kennerly advise you that this motion had been granted?"

"It was during lunch hour."

"Before one?"

"Yes. It was faxed to Roy Rhodes at 11:55."

Question: And granted before 1 p.m.?"

"Correct."

"Now, Mr. Shenk -- excuse me; I mean Mr. Blackman" --

Answer: "Yes, sir."

-- "did you ever notice this for hearing?"

Answer: "We requested a hearing with our fax transmittal. 'Request immediate disposition of the motion, if possible. If I need to set a hearing, please advise my secretary immediately.'"

Question: "Did you notice it for a hearing?"

Answer: "It hasn't been formally noticed."

"Did you notice me of a hearing on your motion?"

Answer: "No."

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Question: "And so your motion -- is it correct to assume that this motion was received and granted without notice to me and without a hearing?"

"I'm not sure when it was faxed to you. You can check with the JQC."

The second example. This is part of the pre-deposition discussion related to administrative matters taken at the deposition of Judge Thurman just January the 18th.

Judge Graham: "Let the record reflect, Mr. Bostic, that I have received several orders from the JQC directed by Federal Express to Gary Graham, Room 215, Old Citrus County Courthouse, and received just now" -- now, this is January 18th. "This is 11:00 in the morning, January 18th, 1992" -- that's an error. Okay? There is a lady in Parade magazine, a savant they ask questions of, and one of the questions they asked her -- they said,

"When does the new year stop becoming the new year?" And she said, "When we stop putting last year's date on everything."

"This is 11:00 in the morning, January 18th, 1992" --

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MR. BOSTIC: Excuse me, Judge.

JUDGE GRAHAM: -- "granting your motion in limine" --

MR. BOSTIC: What page are you reading from, please?

JUDGE GRAHAM: Seven, the bottom of the page, line 45.

-- "which limits me to no more than two opinion witnesses and no more than three character witnesses. Is it correct, Mr. Bostic, that you have never noticed me for a hearing on that motion?"

Mr. Bostic: "There was not a hearing on the motion. That is not the practice of the Commission to conduct hearings on motions. That's correct."

"Did you ever notice me for a hearing?"

"No, I did not."

"Was there a hearing held?"

"Not to my knowledge, no. There was not a hearing."

So what I'm trying to share with the Commission is this -- and I don't even know if the rest of the Commission is aware of this. Three times -- and I believe more than three

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times -- I have had people come up and hand me motions and tell me, "It's granted." And they call that due process of law. I don't think so.

And furthermore, all of these motions which have been granted by the Motion Commission -- excuse me; the Motion Committee -- I have -- there is no way -- I have no idea how they do it. Judge Wigginton signs them. I don't know how they get together. I don't know when they talk about it. I don't know what they consider. I've never been noticed for any of them. I'm never given -- and I would like to state -- it's the case of State of Florida versus Charles, which I've been trying to get into the record all day long.

This is an appeal that I took on behalf of a mentally ill patient -- one of them. Here's what the Second District Court of Appeal said -- the very same issue that I'm raising here about not being allowed to argue the facts or law to the, quote, Court.

I had a judge who didn't believe it was necessary to argue the facts or the law. Okay? "You don't need to do that."

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Quoting from the opinion reversing the judge: "Some cases may appear to the trial judge to be simple, open and shut, and surely, in many such cases, an argument will, in the words of Justice Jackson, be likely to leave a judge just where it found it.

"But just as surely, there will be cases where closing argument may correct a premature misjudgment and avoid an otherwise erroneous verdict. And there is no certain way for a trial judge to identify accurately which cases there will be until the judge has heard the closing summation of counsel.

"Appellants should not have been refused any inquiry into the psychiatrist's expertise, and he should have been granted an opportunity to present a closing argument.

"We recognize that the trial court's dockets are heavy" -- as I recognize that you folks are busy people -- "and we sympathize with the need to keep the process moving" -- which I do sympathize, even though people sometimes get irritated with me for being

a stickler on the evidence. "Nonetheless, due process rights must prevail."

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And, folks, I have said this before. I feel like a little child at a table, you know. And you're sitting there, and they're passing the pork chops and mashed potatoes all around the table, and they're forgetting about you.

Please, just pass a little due process my way. Okay? That's all I'm asking for. And I would make these objections and note them for the record.

THE CHAIRMAN: The objections are noted. The Commission will reconvene tomorrow at 9:00. I would ask that the Commission join with me so we can work out logistics for transportation for tomorrow and a time sequence.

Mr. Bailiff, thank you for you help; and Ms. Court Reporter and Madame Clerk, we'll see you tomorrow at 9:00. Thank you very much.

(Proceedings conclude at 6:10 p.m.)

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JUDGE GRAHAM: I don't know at this time, Your Honor. I was -- they disappeared into this rubble.

THE CHAIRMAN: Judge Graham, I am sitting here, and I can see those documents where you laid them down.

JUDGE GRAHAM: If you will point them out to me, I will take the ones out that --

THE CHAIRMAN: It was the document you made -- for your opening statement, with the Judicial Canon Number 1, and you have it in your hand.

JUDGE GRAHAM: Okay. Then --

THE CHAIRMAN: And, Judge, you will not mislead me again.

JUDGE GRAHAM: Excuse me, I move --

THE CHAIRMAN: Did you hear me?

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JUDGE GRAHAM: I heard you, and I move for a mistrial.

THE CHAIRMAN: Well, the mistrial is denied.

JUDGE GRAHAM: May I state the basis for my mistrial?

THE CHAIRMAN: No. You will continue, please.

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JUDGE GRAHAM: Your Honor, I have two files: one is labeled "Brad King"; the other is labeled "Brad King, Public Records Request." They are essential to me being able to cross-examine this witness, and I would ask for a recess for me to be able to find it.

THE CHAIRMAN: Judge Graham, I've asked Mr. Bostic -- you knew that Judge Graham -- I'm sorry; that Mr. King -- was going to testify a

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long time ago, didn't you?

JUDGE GRAHAM: I didn't know when.

THE CHAIRMAN: Well, I'm not going to break anymore. Please proceed in your cross-examination.

JUDGE GRAHAM: I would like to make a record at this point that this is where --

THE CHAIRMAN: There is no further argument on that issue.

JUDGE GRAHAM: I'm not making argument. I would --

THE CHAIRMAN: Judge, please continue with the cross-examination.

JUDGE GRAHAM: Are you ordering me not to make a statement on the record to preserve a due process --

THE CHAIRMAN: You've made your objection. I've ruled on it. You may proceed.

JUDGE GRAHAM: Do I understand that I may not mention the federal courts?

THE CHAIRMAN: Judge, I've already ruled on it.

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JUDGE GRAHAM: Mr. Chairman, after being in hearing from nine to six yesterday, from nine until 6:30 today, with the Chair only allowing me a 20-minute break, I am so exhausted right now that I cannot properly defend myself in these proceedings and would request that the Commission ad-adjourn until tomorrow.

THE CHAIRMAN: No. I'm going to finish this witness. Judge, you had ample time to get ready, you had breaks during the lunch hour to do whatever you did, and we are going to continue.

The Commission has driven from Ocala to be here. I was here at 8:15 waiting for you to appear as I requested. You did not show on the evidentiary stuff, so I will take no further argument. We will complete this witness. Please continue.

JUDGE GRAHAM: Mr. Chairman, I didn't say I wasn't prepared. I said I'm too exhausted to continue.

THE CHAIRMAN: Please continue. You

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JUDGE GRAHAM: I would object on the basis of due process of law that --

THE CHAIRMAN: I have ruled on it --

JUDGE GRAHAM: I understand.

THE CHAIRMAN: -- and if you want to do anything on the record, you can do it after we finish with the witness.

JUDGE GRAHAM: Your Honor, I object to that. You are making it completely impossible for me to perfect my record on appeal. There is no way I'm going to remember this myriad of objections and proffers after --

THE CHAIRMAN: Are you finished asking questions, Judge?

JUDGE GRAHAM: No, I have not. I will need to take a moment to make a note of this.

THE CHAIRMAN: All right. I'm going to give you one minute.

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THE CHAIRMAN: Do you have any further questions?

JUDGE GRAHAM: Yes, I do.

BY JUDGE GRAHAM:

Q Did you not form -- what is -- I don't know the precise name of it because I can't refer to my documents -- but what is commonly referred to as the Citrus County Jail Release Committee?

MR. BOSTIC: Objection, Your Honor. It's beyond the scope. If it goes to anything, it goes to one of his affirmative defenses, and it's not his case.

THE CHAIRMAN: I'll allow it.

JUDGE GRAHAM: It goes to bias and credibility on what this fellow did.

THE CHAIRMAN: I'll allow you to inquire until I see where he's going. The objection --

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JUDGE GRAHAM: I would like the record to reflect --

THE CHAIRMAN: -- is overruled. You may answer the question.

JUDGE GRAHAM: -- that this individual right here --

THE CHAIRMAN: Judge, will you pay -- don't turn your back to me and make comments to the Commission. I have just ruled. The question is being answered. Please pay attention to me. Please answer the question.

JUDGE GRAHAM: The Commissioner said, "Jesus Christ."

THE CHAIRMAN: Judge, please. Judge, I'm asking you to pay attention to your questions of this witness and my rulings. His question is --

JUDGE GRAHAM: I would move for a mistrial based on the fact that this Commissioner has prejudiced the minds of the other Commissioners by making an explanation of "Jesus Christ." And that's exactly the way he did it --

THE CHAIRMAN: Well, I --

JUDGE GRAHAM: -- and I would move for

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his disqualification.

THE CHAIRMAN: The motion for a mistrial is denied, and you may answer the question.

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Q Have you ever contacted the committee on ethics -- the committee --

JUDGE GRAHAM: See, after ten hours -- I apologize. I apologize not only to the Chairman, but I apologize to the public for standing here and being at a point where I can only half stutter my questions. And I object on due process grounds that this violates my fundamental right to due process and a fundamentally fair procedure where I am put under this type of an ordeal from nine in the morning until 7 o'clock at night with a 20-minute lunch break. And the statements of the Chair that I had other times to relax is not true. At all other times I was scurrying around trying to respond to implicit threats to put me in jail today.

Mr. Chairman, I have much more to get into with this individual. After ten hours -- more than ten hours -- and without

being allowed to prepare and without being allowed to get my deposition from this individual, I can't proceed. It's physically and procedurally impossible for me to proceed at this time.

THE CHAIRMAN: So noted. Judge, you are now released to return to your activities. I don't know if you're under subpoena by anyone else.

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JUDGE GRAHAM: May I ask permission to note for the record that I do not have a continuing objection; that these are each individual objections?

THE CHAIRMAN: No. I am not going to delay the trial. You can make your motion at a later time. We are proceeding with the cross-examination of this witness. Please proceed.

JUDGE GRAHAM: May I ask permission to finish my federal due process objection?

THE CHAIRMAN: I have ruled on that. You are pushing me, Judge Graham, and I am getting ready to hold you in contempt, and I'm not going to warn you again. And if that's the case, I'm going to recommend incarceration for your activities of

disdain for this Chair, and it is not going to happen anymore. You will orderly proceed with the cross-examination of this witness. Now, please proceed.

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JUDGE GRAHAM: May I approach the bench sidebar?

THE CHAIRMAN: No sidebar. What do you want?

JUDGE GRAHAM: I want to ask permission to have my assistant stand ready with a camera and take a picture of Ms. Barnes the next time she goes to sleep.

THE CHAIRMAN: You will not disrupt this court; and that statement is incorrect, and you will continue. And no one will be brought forward in here. Ask your questions.

JUDGE GRAHAM: Is that permission denied?

THE CHAIRMAN: Permission for anyone to come forward and take photographs is denied.

JUDGE GRAHAM: Permission for her to take the photographs --

THE CHAIRMAN: Anyone. Do you understand?

JUDGE GRAHAM: Not coming forward; to just take the picture while she is sitting there.

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THE CHAIRMAN: There will be no pictures taken in this courtroom of any of the Commissioners by your personnel on this side of the bench -- I'm sorry, this side of the rail.

JUDGE GRAHAM: Permission for Ms. Baarsma --

THE CHAIRMAN: I am not going to argue the issue anymore. Please proceed. You are intentionally delaying this trial, and you are pushing my patience, Judge Graham. This is conduct you would not allow in your own courtroom, and I'm not going to allow it in this Commission hearing. So stop it and proceed with the case.

JUDGE GRAHAM: I would like to make a motion for a mistrial. I think you have --

THE CHAIRMAN: The motion for a mistrial is noted, denied. Please proceed.

JUDGE GRAHAM: May I ask permission to make a statement for the record on that?

THE CHAIRMAN: All right. I am holding you in contempt for delay of this case. I am going to suggest to you that you have continuously disregarded the instructions of the Chair; you have intentionally delayed this



trial; you have made demeaning remarks to the Chair; you have not been paying attention to my instructions for orderly presentation of this evidence.

I am recommending to the sitting Judge Yawn to come here and show reason to you why you should not be held in criminal contempt. I am going to ask for incarceration of you as soon as Judge Yawn can come here. We will take that matter up as soon as he can get here.

Now, you will proceed. And I suggest strongly that you get your counsel here to represent you.

Mr. Rhodes, come forward.

(Discussion off the record.)

THE CHAIRMAN: The contempt occurred here. The request of General Counsel is that I was talking about civil contempt. You have done it in the presence of the Commission, in my direct

presence; and I am going to ask for activity -- I mean, ask for the judge to so hold you in contempt.

Now, please proceed. That is one matter we will take up as soon as the judge gets here.

JUDGE GRAHAM: I'd ask permission for a

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recess, because you've unnerved me, and I need a few moments to collect my thoughts.

THE CHAIRMAN: You will continue, please. If you are finished with your cross-examination, we will call the next witness.

JUDGE GRAHAM: I would like permission to make a motion for a mistrial.

THE CHAIRMAN: Make your motion.

JUDGE GRAHAM: I would move for a mistrial on this. These are the trier of fact, and you have made these statements threatening to put me in jail -- saying that you're going to ask to put me in jail. And at this point, it would be entirely unreasonable to expect these Commissioners to listen to my testimony or the testimony of my witnesses and believe them when you've made me out to be --

THE CHAIRMAN: Your objection is noted and denied. Please continue, Judge.

JUDGE GRAHAM: May I have permission to finish it?

THE CHAIRMAN: No. You have completed your objection. Please continue. You are not going to delay this trial anymore.

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JUDGE GRAHAM: Permission to look through my files. I have a transcript of that proceeding.

THE CHAIRMAN: Please hurry, Judge. You're delaying the trial. I would appreciate it if you would have your documents ready. Please continue and get your documents. You need to make no comment. I'm giving you time to get the records, so please do it.

MR. BOSTIC: Judge Graham, is it a transcript of February 20th, '91, that you're looking for?

JUDGE GRAHAM: That's it.

MR. BOSTIC: It's in evidence as No. 3.

THE CHAIRMAN: Judge, it has now been three minutes since the last question. Do you have any further questions of this witness?

JUDGE GRAHAM: I ask permission --

THE CHAIRMAN: Do you have any further questions of this witness?

JUDGE GRAHAM: Yes, I do.

THE CHAIRMAN: Then ask the question now.

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If not, he will stand down.

BY JUDGE GRAHAM:

Q You stated that --

JUDGE GRAHAM: May I make a due process objection, Your Honor -- excuse me -- Mr. Chairman?

THE CHAIRMAN: No. Not at this time. You may make an argument at a subsequent time.

I'm getting ready to dismiss this witness, Judge Graham. Are you finished?

JUDGE GRAHAM: I was just making a note so I would be able to make my proffer.

THE CHAIRMAN: I am now finding you once again in contempt of this Commission. The Court feels that your actions, attitude, and activities have been disruptive, scandalous, improper in this Commission hearing and contemptuous in nature, and I hereby charge you with contempt of this Commission.

And at this time I'm going to allow you, at a break, to get yourself counsel to have him here with you or her here with you so that when Judge Yawn comes forward and I make the motion for contempt, where I'm going to ask for incarceration of you, that you will have proper

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representation. I will not delay the proceedings for you to get counsel at a later time. When we take a break, I suggest that you get yourself counsel to represent you.

Now, do you have any other questions of this witness?

JUDGE GRAHAM: I have one statement to make.

THE CHAIRMAN: Do you have any other questions of this witness?

JUDGE GRAHAM: Yes, I do.

THE CHAIRMAN: What is the question?

JUDGE GRAHAM: May I have a recess? You've unnerved me, and I need a recess --

THE CHAIRMAN: There is no recess.

JUDGE GRAHAM: -- to regain my composure.

THE CHAIRMAN: Are you finished with this witness?

JUDGE GRAHAM: No, I am not.

THE CHAIRMAN: Then ask the question.

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Q You investigated the postcard caper rather closely, did you not?

MR. BOSTIC: Objection. Any relevancy. I think this area has been exhausted.

THE CHAIRMAN: The objection is sustained.

JUDGE GRAHAM: May I proffer a response?

THE CHAIRMAN: At a later time, Judge.

JUDGE GRAHAM: Permission to just state federal due process on the record?

THE CHAIRMAN: You may do it later on, Judge.

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JUDGE GRAHAM: Mr. Chairman, he has put Mr. King on the stand and said -- asked him the following question: Was there any favoritism or friendship with respect to the Denise Ortolano case? Answer: No.

Now, I'm going to put on the record of the Denise Ortolano case, the record of the brief on appeal. I give you notice that I'm going to request judicial notice of that appellate file, Mr. Bostic. Do you demand written notice?

MR. BOSTIC: No, I do not.

THE CHAIRMAN: By the way, Judge, if you get the files or copies of them, I think Mr. Bostic will cooperate with you, and I will take judicial notice.

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JUDGE GRAHAM: I'm going to put judicial notice -- I'm going to have him take judicial notice of the appellate brief of -- it's not the Denise Ortolano file; it's the Kathy Clark file which contains all of the information about all of these cases.

Now, I have to submit to the Commission, the trier of the fact, which is also the prosecutor and investigator -- so I feel like I have to really convince them -- I have to present to them that brief which outlines all the favoritism, and I also have to have his sworn testimony, "Nope. There was nothing. Favoritism was not involved."

Now, what do I want to do? I want to establish a routine pattern or practice of many examples, before and after, where favoritism has been shown in the Citrus County court system. And that is highly corroborative -- excuse me one moment, please -- highly corroborative, collateral, and circumstantial evidence supporting my position to go to the trier of fact in determining who is telling the truth, Judge Graham or Brad King.

And that's why it's relevant. And to



deny that to me denies my right under the federal constitution to due process of law and to defend myself.

MR. BOSTIC: Before he should be allowed to open this wide door -- and he talks about things being collateral -- it must first be collateral to something. You can order the evidence --

order the presentation of the evidence, and courts frequently do. It is rare that in a trial you are allowed to prove your similar acts or your collateral before you have proved your underlying. He needs to prove first his underlying before the collateral or the similar so he can tell if it is collateral or similar to anything.

THE CHAIRMAN: I understand your arguments, both of you. What I am indicating I'm going to do on this is: I'm going to restrict the presentation of evidence to matters that deal with favoritism prior to 1991 and allow you to proffer items subsequent to them.

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I had a third proffer that I needed to make. It had to do with a federal constitutional issue. I asked the Chairman, yourself -- I said, "Mr. Chairman, permission to proffer." "Permission denied." I believe, Mr. Chairman, that the denial of an offer of a proffer of a legal argument or of evidence is just absolutely reversible error. I don't think you can do that. It's -- if these proceedings are upheld by the appellate courts, I will be amazed. I hope -- I pray

to God that they aren't, because if other judges have to go through this, we do not have an independent judiciary anymore.

And you would -- you said, "No. You cannot proffer the argument."

THE CHAIRMAN: No. That's not true.

JUDGE GRAHAM: Strike that.

THE CHAIRMAN: Judge, I said --

JUDGE GRAHAM: Strike that.

THE CHAIRMAN: Judge, I said --

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JUDGE GRAHAM: You said, "You cannot proffer it now. You can proffer it at the end." I stand corrected.

And in the middle of all these complicated proceedings -- after nine hours Monday, ten hours yesterday, and however many hours this morning -- I said, "Mr. Chairman, may I make a brief note so that I can remember it?" And the Chair denied me that opportunity.

And here -- I'm going to -- Madame Clerk, mark this as exhibit -- what exhibit are we up to?

THE CLERK: 17.

JUDGE GRAHAM: Exhibit 17.

(Respondent's Exhibit 17 marked for Identification.)

JUDGE GRAHAM: These are the notes I was taking. Item three here, where I wrote "Need" -- and I started to write the rest of the legal argument that I needed to make, and you cut me off. You would not let me do it.

And this is after telling me -- after charging me with contempt and telling me you were going to ask to put me in jail, you told me that. You said, "I'm charging you with

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contempt. I'm going to ask them to put you in jail." And after telling me that, you wouldn't even let me make a note of a proffer that you wouldn't let me make in the hearing. And now I don't know what it is. I honestly don't know what it is.

I've got -- one, two, three, four, five, six -- six notes of proffers you said I could do. This is number three, and it's totally blank, and I'm going to introduce it into the record for the purpose of appeal. Do I have permission to do that?

THE CHAIRMAN: You can have it marked for identification.

JUDGE GRAHAM: May I have it marked into evidence for the purpose of this proffer?

THE CHAIRMAN: Into evidence?

JUDGE GRAHAM: Yes.

THE CHAIRMAN: You can have it marked for identification.

JUDGE GRAHAM: Okay.

Now, that was a further violation of my fundamental rights of due process under law guaranteed by both θhe federal and state constitution. When this hearing, that's been

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held by the investigators, the prosecutors, and the quasi-judge, gets to the point where I'm not even allowed to make a note, it's blatantly clear that there is no due process involved in these proceedings.

And I will point out for the record that at one point you were timing me. You were timing me. You were saying, "You took three minutes to write that note." That was with respect to, I believe -- I'm not certain -- item four.

Now, I'll read to you -- and you made some comment implying --

THE CHAIRMAN: Judge, let me interrupt you. I am not going to keep the court reporter here all day. She needs to take a break, and so does the bailiff and the clerk. I was going to give you 15 minutes, and now we're almost a half hour into your proffer, and -- you know, there's got to be a reason -- if you're going to make an argument on items that you've not touched on, you may do so; but I am going to leave them go in three minutes, and then we'll come back, and then we'll -- later on in the day you can continue your proffer, because I'm



going to let these people go to lunch.

JUDGE GRAHAM: Mr. Chairman, later on in the day I will not remember all of these complicated issues of constitutional law and legal theory. Not after another --

THE CHAIRMAN: Do you want an hour for lunch?

JUDGE GRAHAM: I want -- excuse me. Am I allowed to tell you what I want?

THE CHAIRMAN: The question is: Do you want an hour for lunch?

JUDGE GRAHAM: I'm not going to have an hour for lunch under any circumstances. I'm going to be --

THE CHAIRMAN: I am going to allow them -

JUDGE GRAHAM: Excuse me.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: Mr. Chairman --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: --may I ask you the courtesy of not --

THE CHAIRMAN: Judge, don't argue with me. I'm taking into consideration the personnel in this court, and I'm going to give



you five minutes to finish your argument on whatever you want to argue on.

JUDGE GRAHAM: I cannot do it in five minutes. I make a further objection on the basis of due process of law.

THE CHAIRMAN: Well, I'm going to give you five more minutes, and then we can do it later on.

JUDGE GRAHAM: Later on -- I will be unable to do it after another six hours of these proceedings, and I will have lost my arguments. I would have not been able to perfect my record on

appeal for the federal courts to review what my arguments were; and what you're basically doing, Mr. Chairman, is you're preventing me from preserving my record on appeal to establish the legal basis for these very serious constitutional issues whereby prosecutors, investigators, and the triers of fact all combine into a process to remove an elected public official. This is very serious business.

I would submit to you, Mr. Chairman, that this is the real problem. The real problem is that you have DCA judges, circuit judges,

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county judges and influential people and yourself, and you all have dockets to go back to on Monday -- or most of you do -- and that you don't want me to have the time to litigate an extremely complicated case in which I have told you there will be hundreds of witnesses and thousands of documents.

This Commission does not want to take the time to try this case properly. It wants me to come in here, it wants me to put a blindfold on, smoke my last cigarette, and get executed. And by gosh, they want me to keep my mouth shut; they want me to go

right along with everything, nod my head, and I suppose at the end get up and say, "Gee, there's the evidence. I'm guess I'm a pretty bad guy." That's the impression I'm getting.

And they cannot stand the fact that a judge has the courage to simply insist on due process of law and the right to bring in the evidence he has to support the fact that he hasn't done anything wrong. And you don't want -- every time you get upset with me it's because I'm making points in this court -- hearing room. When I start



making points and I start showing I'm right -- just like my opening statements. I was not allowed to even make my opening statements. Forty minutes for forty-one charges; less than sixty seconds to explain my opening charges.

And I have never had an opportunity, ever, to tell my side of the story in this case, ever. Why? Because I don't try my cases in the newspaper. I try them in the hearing room. I have waited my turn to tell my side of the story, and the first time -- after all of this negative publicity; being removed for false reasons from the criminal bench; all of these editorials; all of these name-callings;

all of these insults; everything that I have endured -- I finally get an opportunity for the first time to tell my side of the story in this case on opening statements. And you know what bugged the Commission? What bugged the Commission was they were beginning to hear the other side of the story, and they were realizing for the first tie, "Gee, you know, maybe this guy has a point here." And you wouldn't even let me finish. And this whole thing with Denise

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Ortolano. The Commission had to stop and let me have Mr. King go out and proffer the relevancy of where I was going. If I had been allowed to continue with my opening statement, I would have told them what the evidence wold show, and the Commission would already have known that. And that's yet another example where I'm being charged with delays caused by the fact that the Commission doesn't want to take the time to just be fundamentally fair with me.

I object to all of this. This hearing has no semblance to justice. It has no semblance to due process. I'm being completely railroaded, and I am completely -- if I can do this well under these

circumstances, I just ask you and the public and the appellate courts to think how well I would do if you would let me defend myself. End of argument.

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THE CHAIRMAN: What date is this dealing with, Judge Graham? Is this before or after February, '91?

JUDGE GRAHAM: This goes to bias and prejudice.

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Q Isn't it true, Mr. King, that your office refused to represent the State in the case of -- the appeal of State v. Floyd? If it will help you with your recollection, this is the individual who came into court and said, "Yep. I ran the stop sign because I was in a drug neighborhood, a black drug neighborhood" -- his words, not mine. I'm just being accurate. "I was in a black drug neighborhood. I was buying dope, and I ran the stop sign on purpose because I was afraid somebody would hurt me."

Did your office refuse to represent the State in the appeal of that case?

MR.BOSTIC: Objection. Relevancy.

THE CHAIRMAN: Sustained. Outside direct. Please proceed, Judge. Judge, I am going to have the witness stand down. I believe you've finished your cross-examination. Is that correct?

JUDGE GRAHAM: No, Mr. Chairman.

THE CHAIRMAN: I have been sitting here

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patiently waiting for you to ask your next question, and I am now going to suggest to you that I am going to finish the cross-examination unless you move along with the proper procedure, asking questions, and quit delaying in this courtroom.

Now, I want to get this witness done, and I have already ruled that you cannot go into anything on the impeachment or bias because you've covered that ad nauseam. You cannot go into areas of bias -- I'm sorry, undue influence -- except for one more matter. You have already dealt with two of them. So unless you limit your questions in that area, we are going to conclude the cross-examination of him pursuant to my ability under 90.612. And then if you have any proffers, you will make the proffers with Mr. King. And,

Mr. King, I'm going to ask you to return later in the day, because we are going to continue with taking testimony here.

JUDGE GRAHAM: May I confer with co-counsel?

THE CHAIRMAN: Yes, sir.

(Discussion off the record.)

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JUDGE GRAHAM: I register a federal due -- excuse me -- a federal objection based on not allowing me to -- my rights to confront the witnesses against me.

THE CHAIRMAN: Objection is noted.

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JUDGE GRAHAM: The objection is I took his deposition, a 14-hour deposition, just last Saturday -- it was Friday. I have my calendar. One moment.

I just took it January 22nd. That was --

THE CHAIRMAN: Last Friday.

JUDGE GRAHAM: -- last Friday. And it was a 13-hour deposition, and I've been unable

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to obtain the transcript, and I will suffer the same problems I had with the previous witness. Without the deposition transcript, it makes it -- it violates my right to confrontation of the witnesses, which I have pursuant to both the federal and state constitutions.

THE CHAIRMAN: Did you expedite the transcript?

JUDGE GRAHAM: I do not have the financial resources to expedite a 13-hour deposition, Mr. Chairman.

THE CHAIRMAN: I understand, Judge. I note your objections, and your objections are overruled. Please call the next witness.

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JUDGE GRAHAM: First of all, I stand corrected. I apologize to the Commission if I said Ms. Friedrich's deposition was ten days ago when it was 30 days ago, because -- in all this confusion, in 81 depositions, that was an honest mistake, okay, and I did not mean to mislead anyone.

I object to this individual for the same reason; that I don't have his deposition transcript, and therefore, I'm being denied my

right under the federal constitution and the state constitution to effectively confront the witnesses against me.

THE CHAIRMAN: The objection is

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overruled. We may proceed here, please.

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JUDGE GRAHAM: I would object to the calling of this witness. This is yet another example of the prejudice that the JQC has placed me in because of -- by not allowing me the proper time to prepare. I took the deposition of Ms. Suzanne Smith, and it is my information that this deposition has still not been transcribed; thus it is interfering with my federal-constitutional-protected right to the confrontation of witnesses.

THE CHAIRMAN: When was the deposition taken, Judge?

MR. BOSTIC: My records indicate December 31st. I think it was December 31st at 5:30 actually.

THE CHAIRMAN: The objection is overruled. Let's call the next witness.

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THE CHAIRMAN: Yes, Judge Graham?

JUDGE GRAHAM: The Chair gave me permission to reserve and make at the end of the proceedings an objection to the discovery being cut off.

THE CHAIRMAN: Yes. Go ahead and do that, please.

JUDGE GRAHAM: I make that objection based on federal due process grounds that -- with the enormity of the number of charges and the close of pleadings just December 31st, that I should be allowed to continue discovery.

THE CHAIRMAN: As I indicated, the trial has started. If you file the proper petition with us and it warrants discovery, we'll consider it.

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JUDGE GRAHAM: I would first make a motion for a mistrial under the decisional

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authority of the --

THE CHAIRMAN: I'm not going to take a motion for a mistrial. You reply to the issues that have been raised here. Please let me know what your feelings are on the recommendations of the State's Attorney about the four witnesses.

JUDGE GRAHAM: My reply to the recommendation of the State's Attorney about the four witnesses is that I am greatly alarmed that some type of ex parte communication must have taken place between the Chair and Mr. King based on the Chair's statements.

Mr. Ridgway's testimony -- he is subpoenaed. He is under valid subpoena of the court -- excuse me, of the Commission. This is a case of constitutional magnitude denying the right of the people of Citrus County to elect the public officials of their choice.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: It is a matter --

THE CHAIRMAN: -- I am not going to take that argument. I am talking about scheduling.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: You may go to that issue,

Judge. Do you have a problem in working out a time reference with these witnesses?

JUDGE GRAHAM: Yes, sir. My case has been totally turned on its head already by the Motion Committee's rulings on my approximately 1,100 items of evidence, and to further interfere with my presentation of my defense the way I planned it would be a further denial of my due process rights under the federal constitution. I demand to call Mr. Ridgway for his testimony today.

THE CHAIRMAN: All right. Mr. Bostic, do you have any argument?

MR. BOSTIC: No, I don't.

THE CHAIRMAN: All right. Unless there is further evidence to be presented that is different than what I've heard already, the ruling of the Chair will be -- is that Mr. Ridgway will either be called Thursday morning or Wednesday p.m. after 1 o'clock and that, Judge Graham, you will give reasonable notice to that.

Secondly, that Ms. Osmond and -- how do you pronounce the other witness? Judge, let me ask him a question. What's the other witness'

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JUDGE GRAHAM: I would like to ask for a rehearing on the dispositions for the motion in limine for the legal reasons that the rules provide that after formal charges are filed -- that all further proceedings are to be public and that the Commission's adoption of the Motion Committee's rulings on my motion in limine were made without my presence, ex parte, and denied my due process rights guaranteed by the federal constitution.

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JUDGE GRAHAM: I would also make an objection at this time, based on due process of law, that the rulings of this Commission on what evidence I may present are so convoluted and complex that I can honestly state to you, Mr. Reiter, that I really -- I am going to be proceeding in great fear of not being able to comply with them, because they are so complicated and complex and convoluted that I don't understand them.

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THE CHAIRMAN: The question is -- Judge Graham, you listed nearly 450 witnesses; and if Mr. Harp is not named in that list, I'm not going to allow him to testify, especially due to the fact that he has already testified and you had extensive cross-examination of him.

JUDGE GRAHAM: Mr. Reiter, I object on due process of law. This Commission --

THE CHAIRMAN: That argument is noted. I made my ruling. Please proceed.

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: Judge Graham, may I suggest to you it is not necessary nor is it proper for you to be thanking the Chair as to its rulings, and I do not appreciate that. So please do not be thanking me. Okay?

JUDGE GRAHAM: Mr. Reiter, may I share with you --

THE CHAIRMAN: No.

JUDGE GRAHAM: -- a legal periodical that says that is the proper procedure, for an attorney to always thank --

THE CHAIRMAN: I am the Chair of these

proceedings. You don't need to say that. Okay? I will presume that you thank me on every occasion. You do not have to say that.

JUDGE GRAHAM: May I --

THE CHAIRMAN: Who is the next witness?

JUDGE GRAHAM: May I --

THE CHAIRMAN: No further comment.

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JUDGE GRAHAM: Mr. Reiter, I formed an

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opinion based on my experience. Unlike Judge Taunton, I didn't take names and numbers. If I had have, he would have charged me with that. Having not taken names and numbers, I was basing it on two or three incidents, one of which you wouldn't allow me to prove, and my general understanding. And now I want to show through circumstantial, corroborative evidence that that was going on. And the Commission's insistence that it's only the names -- only the particular names that were in my head proves that I did it responsibly is not correct. All right?

I did not -- it was never my understanding that as a part of my right to free speech -- that before I said that attorneys and doctors and influential people got their cases reduced -- it was never my understanding to exercise that right to free speech that I would have to prove name, number, driving record. And the Commission is preventing me from showing circumstantial evidence that it goes on all the time.

THE CHAIRMAN: All right. Judge, let me suggest to you that the two allegations in B

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and C of Count 1 says, quote, that you allegedly stated this: "I know of attorneys and doctors who have been arrested for DUIs and have had their DUIs reduced to reckless driving basically because they are doctors and lawyers."

If you have evidence of that, I'm going to allow that into evidence. But is' where you say here "I know of attorneys" --

JUDGE GRAHAM: That's right.

THE CHAIRMAN: If you don't know of attorneys at the time that you made that statement on September 15th, 1988, I don't find that it's material. I understand what you're saying.

JUDGE GRAHAM: I knew of them. I just didn't know their names and driving record numbers. This is -- you know, you sit there, and hundreds of cases go through the courts. You don't take their names and --

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JUDGE GRAHAM: I would like to state for the record that I would renew all of my objections that I made yesterday and add that they were also based on the federal constitution and my federally protected rights to due process of law and would like an order

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JUDGE GRAHAM: At this time I'll tender into evidence Exhibits No. 190 and 192. Those are the depositions of Judge Beauchamp and former Justice Raymond Erlich.

THE CHAIRMAN: Okay. They're going to be accepted. Let me ask you a question, Judge. Are they -- is this opinion testimony on -- what?

JUDGE GRAHAM: This is strictly to preserve the federal constitutional issue of



the vagueness of the code, which has been agreed upon by counsel.

THE CHAIRMAN: Then we'll accept that as a proffer into evidence. It's authenticated, et cetera, but that is not an issue that we're resolving, as you well know.

JUDGE GRAHAM: No. But Mr. Bostic has stipulated that it would be into evidence. I'm not going to argue it as evidence, but it will be in evidence for the purpose of federal appeal. That's what the stipulation of counsel is.

THE CHAIRMAN: All right. Well, the stipulation will go in, but I -- the Commission has ruled on this.

JUDGE GRAHAM: I will not argue it.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: Over objection I will not argue it, but I will not argue it. And tomorrow I will have the deposition of former judge Harry Lee Coe as Exhibit 191 to introduce.

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THE CHAIRMAN: Well, in either event, your personal observation is not material to the issues. Secondly, you have not been tendered as an expert. You've indicated you don't have the qualifications. So on both grounds, I'm going to sustain the objection.

JUDGE GRAHAM: I renew all my objections to these proceedings based on due process of law under the federal constitution and would ask my next question.

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JUDGE GRAHAM: Mr. Chairman, I want to renew my objection to the triers of fact continuing to impeach my witnesses. It's a

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prejudice, and I would move for a mistrial again.

THE CHAIRMAN: The motion is denied. Please continue, Judge.

JUDGE GRAHAM: And preserve a federal objection on appeal to due process rights.

THE CHAIRMAN: No. You made your objection.

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THE CHAIRMAN: And when I say "your closing," it's whether you or your attorney makes it. I'm not going to give any extra -- the Commission is not going to give any more time other than the two and a half hours. So if he interjects himself in there, he's using your time.

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JUDGE GRAHAM: I understand. Do you realize that that is approximately only four minutes per charge?

THE CHAIRMAN: Well, we know what it is, and we --

COMMISSIONER GILLMAN: 5.76.

THE CHAIRMAN: Judge, that is a -- we feel that the totality of the time, two and a half hours, is more than reasonable for you to make your closing statement.

JUDGE GRAHAM: May I ask --

THE CHAIRMAN: We're not going to argue that point. That's the decision. Now, you may ask me for clarification on anything you want to ask.

JUDGE GRAHAM: I would object -- I understand; I will comply. I would voice my objection based on the due process rights afforded by the federal constitution and state that this denies me a fundamentally fair forum in which to explain this extremely complicated case involving hundreds of documents and perhaps as many as -- I don't know. How many witnesses did we call -- 50 witnesses. It cannot be done fairly, and I would preserve

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that federal objection.

THE CHAIRMAN: Your objection is noted, Judge.

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MR. BOSTIC: I would concede that it is inaccurate.

THE CHAIRMAN: Okay. Thank you, sir.

JUDGE GRAHAM: Mr. Chairman, I have a statement I want to make about the way I'm going to proceed. It's a very important

statement for the purposes of appeal, and I would like permission --

THE CHAIRMAN: Go ahead. Make your statement.

JUDGE GRAHAM: I just wanted to make it very clear to the appellate courts about why I am proceeding over the next two days in the way I am proceeding, because I don't want them -- I don't want the JQC or the State of Florida saying, "Well, Judge Graham, you know, called his last witness at one o'clock. He could have gone on to five or six. Obviously he didn't have any more witnesses to call." I don't want them to think, "Well, why didn't he publish all the documents to the Commission?"

I want the appellate courts to understand clearly that I have been told by the Commission -- Mr. Chairman -- that "We will do this in four days, we will be finished at the end of



Friday, and you will complete your case by the end of Friday."

Given that, and over my objection, I am now presenting the case the way I am, only trying to make the best of what I consider to be a bad proposition. And I don't want the -- I want the appellate courts to understand that I consider this to be a six-month

case, I consider it to be a case of constitutional magnitude, and that if I were allowed the time to present this case properly, I certainly would not conduct myself in the way that I'm going to in the next two days. I would do everything that is fit and proper to the defense of my case.

THE CHAIRMAN: All right, Judge. You may proceed.

MR. BOSTIC: If I could say one thing in response to that, and that is that the Chair's ruling also included that Judge Graham could call any factual witnesses he chose to call concerning the 26 allegations left against him.

THE CHAIRMAN: All right. That's enough on this.

JUDGE GRAHAM: That's true, and I will

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JUDGE GRAHAM: I object to the continuing adverse impeachment of my witness -- my character witness -- by the trier of facts, and I would move for a mistrial.

THE CHAIRMAN: Your motion for a mistrial is denied, and I don't look at these questions as adverse questions.

JUDGE GRAHAM: And I object based on the due process rights --

THE CHAIRMAN: I don't look at them that way.

JUDGE GRAHAM: -- of the federal constitution.

THE CHAIRMAN: I understand that, Judge.

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Q Could you start with 1987 and share with the Commission the civic activities that I have engaged in as a Citrus County judge? Just the date and a brief description of what it was.

MR. BOSTIC: Excuse me, Your Honor. If

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he's going to have this witness start at 1987 and go through these two files and give a brief description of everything he does, I believe that would be redundant. I would be willing to stipulate he's been very active in the community.

JUDGE GRAHAM: A stipulation doesn't go to the weight. Saying I've been very active is very different than this Commission taking ten minutes to hear everything that has been done.

THE CHAIRMAN: Well, Judge, we're going to read those documents, and we're going to go through each and every one. I'll let her do '87 as an example of all the other years. You can do 1987?

JUDGE GRAHAM: I object on the basis of due process of law --

THE CHAIRMAN: Your objection is noted, Judge.

JUDGE GRAHAM: -- guaranteed by the federal constitution.

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COMMISSIONER GILLMAN: In 1990 Judge Graham ran for reelection, did he not?

THE WITNESS: yes, sir.

COMMISSIONER GILLMAN: How many opponents did he have?

JUDGE GRAHAM: Objection. What is the relevancy of this with respect to -- it exceeds the scope of direct if nothing else.

THE CHAIRMAN: Well, the inquiry is very broad for the Commission members, and I'm going to allow the question to be asked and answered.

JUDGE GRAHAM: I preserve my federal objection on appeal, due process of law. The Commission is becoming an interrogator of my witness.

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JUDGE GRAHAM: Mr. Commissioner, at this time I wanted to make a mistrial based on the following conduct:

During the testimony of Mr. Cury, I asked the question, "Does a leopard change his spots?" One of the Commissioners said, "Yes," and that is why Mr. Cury responded to that, and he was the person that Mr. Cury was saying -- in response to what that gentleman said.

That is an obvious showing of bias and prejudgment of me and -- not only shows his bias and prejudgment, but it affected the other members of -- the triers of the fact who are supposed to be impartial, and I would move for a mistrial.

THE CHAIRMAN: Your motion is denied. Please continue.

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JUDGE GRAHAM: And I would preserve my federal objection to due process of law.

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JUDGE GRAHAM: I'm doing this only to preserve my record on appeal.

THE CHAIRMAN: Well, that witness will be handled during our proffer at such times as we

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work out the scheduling.

JUDGE GRAHAM: And I would object to the fact that I'm not allowed to call Mr. Wright. I object that the motion restricting me was heard without a hearing, ex parte.

THE CHAIRMAN: Judge, you argued that to me last Thursday, and it's noted in the record. Is there any more evidence to be presented on your behalf other than the proffer that you talked about?

JUDGE GRAHAM: Permission to just state federal due process of law.

THE CHAIRMAN: You stated it.

JUDGE GRAHAM: At this time I would introduce into evidence Exhibit No. 191.

THE CHAIRMAN: Which one is that, Judge?

JUDGE GRAHAM: This is the deposition of State Attorney Harry Lee Coe.

THE CHAIRMAN: That was stipulated to, Mr. Bostic?

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: By the way, Judge Graham and Mr. Bostic, when the Commission reviews these depositions, we are to presume that any objections in there that have been made have

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been withdrawn. Am I correct?

MR. BOSTIC: Yes, sir.

THE CHAIRMAN: That will be admitted into evidence.

(Respondent's Exhibit 191 admitted into evidence.)

JUDGE GRAHAM: Judge Graham, under great protest and preserving his rights to federal due process objections, concludes his case.

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JUDGE GRAHAM: Yes. First of all, I have a separate objection based on the fact that the Chair made its ruling and that County Judge Gillum --

COMMISSION GILLMAN: Gillman.

JUDGE GRAHAM: -- Gillman motioned to the Chair, asked for a hearing on this, and that does not show the cold neutrality required of the triers of fact. And I would object to that based on the federal constitutional provisions

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for due process of law for a fundamentally fair trier of fact.

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JUDGE GRAHAM: No argument. A motion for a continuance.

THE CHAIRMAN: Motion for a continuance is denied. Go ahead and bring the witness in.

JUDGE GRAHAM: Permission to state the basis?

THE CHAIRMAN: Pardon?

JUDGE GRAHAM: Permission to state the basis?

THE CHAIRMAN: No. There is not going to

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be a continuance.

JUDGE GRAHAM: Permission to preserve my federal due process objection on the basis --

THE CHAIRMAN: You've done that in the past, and there's no need for further argument.

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Q Do you know which one of the bailiffs or deputies told him that?

A No, I don't.

MR. BOSTIC: Okay. I have no further questions.

THE CHAIRMAN: Mr. Tate.

COMMISSIONER TATE: Ms. Baarsma, you've been here for most of this trial, have you not?

THE WITNESS: Yes, I have.

COMMISSIONER TATE: Were you here when the rule was invoked?

THE WITNESS: When the what?

COMMISSIONER TATE: Rule was invoked. When the sequester order was ordered.

THE WITNESS: Yes. I complained to them about --

COMMISSIONER TATE: Did you understand -- excuse me. Did you understand what that order was?

THE WITNESS: That if you were a witness, you were not supposed to be at the hearings.

COMMISSIONER TATE: So you really had a full understanding about that.

THE WITNESS: As far as I could understand it.

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COMMISSIONER TATE: Did you advise Judge Graham that you saw Ms. Miller --

THE WITNESS: Yes. I --

COMMISSIONER TATE: -- the day that you saw her?

THE WITNESS: I came and advised him that there were witnesses in there --

COMMISSIONER TATE: No. I'm asking specifically --

THE WITNESS: Things were going on in the courtroom.

COMMISSIONER TATE: -- did you advise him about Ms. Miller?

THE WITNESS: I told him some of the people that I had seen. I don't know -- Ms. Miller I only saw there one time, and I took her picture. I don't know if -- the first time I told him, I don't think I said Ms. Miller, no.

COMMISSIONER TATE: That picture is a month old. Did you show him the picture the same day that it was developed?

THE WITNESS: I didn't develop it. It wasn't my camera.

COMMISSIONER TATE: All right. Did you



mention to the judge --

THE WITNESS: I took pictures --

JUDGE GRAHAM: Excuse me. I object.

COMMISSIONER TATE: -- that you saw Ms. Osmond? I'd like to --

JUDGE GRAHAM: I would just like to voice an objection.

THE CHAIRMAN: Judge, let him ask the question before you do your objection.

COMMISSIONER TATE: Ms. Baarsma, did you mention to the judge that you saw Ms. Osmond in the room the same day you saw her?

THE WITNESS: Yes. One of the days I did, yes.

COMMISSIONER TATE: So Judge Graham knew that this witness that was ordered to be sequestered was watching the proceedings on television, and you told the judge the same day you saw the witness.

JUDGE GRAHAM: Objection. I would -- Mr. Tate -- is that correct?

COMMISSIONER TATE: That's my name.

THE CHAIRMAN: It's Mr. Tate.

JUDGE GRAHAM: Mr. Tate has not grilled Ms. Osmond or Ms. Miller on these subject



matters, and I object that this shows the obvious bias -- and I object that this shows the obvious basis and prejudice of the Commission. And I would again object on the basis of due process of law. These people who investigated and filed the charges against me now are very upset. They want to impeach my witnesses but not the witnesses of Mr. Bostic, and I renew my federal objection.

THE CHAIRMAN: Your objection --

THE WITNESS: I would --

THE CHAIRMAN: Excuse me, ma'am. One second. Your objections are noted. There is no legal grounds for your objection, so the objection is overruled. Will you answer the question, ma'am?

THE WITNESS: Yes. I would like to remind Mr. Tate, for one thing, that when we came -- there was a lot of confusion going on here, and you were threatening to put Mr. -- Judge Graham in jail. And so going in and out and seeing the witnesses and move -- there was so many things going on, it was just basically a blur as to exactly when exactly which things happened, but I have no doubt as to exactly



JUDGE GRAHAM: Would you find that, because we'll probably need both of them.

THE CLERK: Yes.

THE CHAIRMAN: Okay. Let's proceed. Anything else?

JUDGE GRAHAM: Yes. Ms. Miller has said that I'm bizarre. Ms. Miller has said that Judge Douglas and Judge Agner

are bizarre. It would be incredibly persuasive evidence for me to put on two professional judges to sit there and give their --

THE CHAIRMAN: But, Judge, I don't want to try that. We're only concerned about you here and her bias. I mean, we're going to weigh her credibility. I don't think you need to put those folks on. I'm not going to allow that. We're going to just allow the Campbell transcript and a very short two rebuttal witnesses. Let's move. Okay?

JUDGE GRAHAM: I would like to preserve my due process --

THE CHAIRMAN: Your objections are noted.

JUDGE GRAHAM: -- based on the federal constitutional right to due process of law.

THE CHAIRMAN: Okay.

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JUDGE GRAHAM: Yes, they are. But Mr. Chairman, Mr. Tarquin is here.

THE CHAIRMAN: Okay. I've told you I'm not going to allow Mr. Tarquin. Judge Demers?

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COMMISSIONER DEMERS: Can we take a short recess, please?

THE CHAIRMAN: For the purpose of my ruling?

COMMISSIONER DEMERS: Yes, sir.

THE CHAIRMAN: No. I'm not going to change my ruling. Let's do this quickly, Judge. Let's bring the person in.

JUDGE GRAHAM: I would object on the basis of federal due process rights.

THE CHAIRMAN: You've got it. Let's call the next witness. Remember, Judge, only as to the Gurrola matter.

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JUDGE GRAHAM: Mr. Chairman, I would very respectfully state that I would rather call more witnesses, but at this time, based on the Chair's rulings -- I would prefer, for the basis of the record, if you would just tell me that I can't call any more individuals.

THE CHAIRMAN: I've told you what the restrictions are. Do you rest now?

JUDGE GRAHAM: No -- well, I don't want to violate any of your rulings.

THE CHAIRMAN: All right. You know what my rulings are.

JUDGE GRAHAM: I have no one else to call that would not violate what you have indicated

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to me that you were only going to allow me to do. Let's put it that way.

THE CHAIRMAN: With that understanding, with that ruling of the Commission, is there anything else?

JUDGE GRAHAM: No, sir.

THE CHAIRMAN: All right. Then you rest?

JUDGE GRAHAM: I rest under protest, yes.

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JUDGE GRAHAM: And with that I would note that at this time, if I had been allowed to make the proffers -- there would be a great number of other objections that I would note at this time,

but quite frankly, they were lost, and I'll never know what they were, and neither will the appellate court.

So I just hope that in reviewing the record they will take a certain amount of latitude with the fact that perhaps I was not able to preserve everything as well as I had wanted.

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**Excerpts**

**from**

**The Transcription of the Pre-trial Conference**

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THE CHAIRMAN: All right. Let the Chair suggest that the areas that the Chair and the Motion Committee and the Commission would like to have discussed here are the affirmative defenses that deal with the fact that the Code of Judicial Conduct is unconstitutional; that the Commission is unconstitutional; that there is selective prosecution; and that the charges are brought against the judge as a result of a conspiracy by political enemies. Those four areas.

First of all, as to the arguments on the constitutional basis of this Commission or the code itself, be mindful -- and, Judge, I want to explain to you -- this Commission is a hearing body. It is not a body that has general jurisdiction, as you well pointed out to me on several occasions. And all we can do is pass upon charges that are made, as to



whether they have any basis in fact, and to make recommendations to the Supreme Court. We do not have -- the Commission does not have the power to rule on its constitutionality or on any other

law that -- whether or not it's constitutional. And what you're asking us to do is outside our purview in that affirmative defense, I would think.

And secondly, to hold ourselves unconstitutional -- that is another thing that is not within our purview. Certainly the Supreme Court of Florida or the federal court or the United States Supreme Court or any other court with jurisdiction over these proceedings would resolve that issue, but we do not have that power to resolve whether the code is constitutional or whether the Commission is constitutional. On the contrary, that has been adjudicated on other occasions and has been resolved, so it's just not an issue.

The issue as to selective prosecution and the conspiracy -- in that area -- the selective prosecution, once again, is not a legal argument that is something the Commission can rule on. It is a matter that -- if there is



such an argument, that it would be -- the Supreme Court of the State of Florida, in reviewing whatever reason you're giving for selective prosecution, would make the ruling. All we are passing

on is whether there is any factual basis whatsoever to see that -- to find out whether you have violated any code provisions of the Judicial Code of Conduct, and if you have done so, whether or not there should be any recommendations. And that's really what the Commission should be doing, and that's our limited area. And so what I need for you to tell me is how do I declare -- or this Commission declare itself unconstitutional, how do we declare that the code is unconstitutional, and how do we rule on matters of law that the Supreme Court really should be handling.

JUDGE GRAHAM: May I answer?

THE CHAIRMAN: Sure.

JUDGE GRAHAM: First of all, I object to the Chair suggesting what affirmative -- suggesting to Mr. Bostic what affirmative defenses he should move to strike. It's evidence of a prejudgment of the issue that



we're about to argue.

I object to you having made all these statements before hearing my argument. I think that these statements should have been reserved after due deliberation and after hearing my argu-

ments. And it's further proof of the unconstitutional nature of this Commission that you would engage in these two types of statements at this motion in limine.

Second, I would argue that this motion in limine should not be heard now. I was not noticed that it would be heard today. It involves extremely complex matters of constitutional law. I came in here expecting Mr. Bostic to talk about certain witnesses that he wanted to object to, and now I find myself placed in a position of trying to argue complex issues of constitutional law, which I was totally unprepared to do, because this was not noticed for hearing today; and also based on the fact that I did not believe the Motion Committee would be here for me to argue it to, and, indeed, they aren't.

THE CHAIRMAN: So you are saying that you had inadequate notice -- well, you didn't have



notice at all. Is that what you're --

JUDGE GRAHAM: I had no notice. The first notice I had that we were going to be arguing this motion to dismiss was when the Commission -- Mr. Bostic announced it some five minutes ago.

THE CHAIRMAN: All right. That is proper grounds for argument, and if you are not prepared to argue the motion in limine, I will not allow that to be argued; but I will deal with the materiality and relevancy of witnesses to be called and issues to be raised by these witnesses. So why don't we go to those issues.

JUDGE GRAHAM: Now, may I finish my response to your statements?

THE CHAIRMAN: I've already ruled on that, Judge.

JUDGE GRAHAM: I understand.

THE CHAIRMAN: Let's move on to -- what I want to talk about is the necessity of the witnesses and any evidence that is going to be presented by you or Mr. Bostic.

JUDGE GRAHAM: Okay. Point of clarification.

THE CHAIRMAN: Go ahead.

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JUDGE GRAHAM: May I respond to your statements about the Commission not having the jurisdiction so that I can preserve it?

THE CHAIRMAN: No, you may not. No, you may not. Because you have already said--

JUDGE GRAHAM: Thank you, Mr. Chairman.

THE CHAIRMAN: -- that is not an issue to be resolved.

JUDGE GRAHAM: I just want to preserve it for the record at this point so the federal courts would know it.

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THE CHAIRMAN: We were going to talk about the last series of witnesses that were not discussed earlier.

JUDGE GRAHAM: Yes. In order to preserve my record on appeal for the federal courts, all of the secrecy surrounding how this has been done has got to come out. I've got to know if they've looked at newspaper editorials. I know that they were sent to them, because Brad King testified he sent newspaper editorials to them. I need to know if they discussed them.

I need to know -- I've got -- if you'll let me put Judge Swigert on the stand, I'll have him testifying that he went to a Florida Supreme Court -- a U.S. -- excuse me. Strike

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that -- A Florida Supreme Court justice and had a Bar complaint filed against an attorney. And I'm wondering if Judge Swigert -- that's correct.

THE CHAIRMAN: I lost -- start again. Say that again.

JUDGE GRAHAM: Judge Swigert -- if you'll let me put Judge Swigert on the stand, he will testify that he wrote a letter to Justice Erlich, when he was on the Florida Supreme Court, saying, "An attorney has misbehaved in Citrus County, and I believe he's violated the Code of Professional Conduct." Charles Horn. Okay?

Then Justice Erlich, who is the final arbiter -- one of the final arbiters -- on Bar grievances, filed a complaint against Mr. Horn. This has been established through the testimony of both Erlich and Swigert.

Now, that raises a reasonable question in my mind if the same thing has not been done with respect to me. This isn't just something I'm pulling out of the air.

THE CHAIRMAN: Do you mean that Judge Erlich, as then a Supreme Court justice,



filed a complaint against a lawyer? Is that what you're saying?

JUDGE GRAHAM: No. Follow me closely on this.

THE CHAIRMAN: Okay. Maybe -- I'm listening.

JUDGE GRAHAM: Justice Erlich, at the time when he was the final -- one of the final arbiters on grievance problems --

THE CHAIRMAN: He is -- or was.

JUDGE GRAHAM: Right. -- is approached by Judge Swigert --

THE CHAIRMAN: Right.

JUDGE GRAHAM: -- by letter --

THE CHAIRMAN: Right.

JUDGE GRAHAM: -- "There's an attorney misbehaving in Citrus County." Erlich writes a complaint to the Florida Bar.

THE CHAIRMAN: All right.

JUDGE GRAHAM: Okay?

THE CHAIRMAN: Presuming that's true, what has that got to do with what you're --

JUDGE GRAHAM: I believe it's been done to me.

THE CHAIRMAN: That someone went to the



Supreme Court?

JUDGE GRAHAM: I believe -- I don't believe -- I don't know it as a certainty, because I can't take the depositions. See, you've put me in the position of making a statement that I can't prove, but the reason I can't prove it is because you quashed the depositions of these Commissioners.

I wanted to put them under deposition and ask the question, "Has a Florida Supreme Court justice contacted any member of this Commission?" It's not an unreasonable question based on the sworn testimony that Erlich did it under the equivalent process used to sanction attorneys. I mean, I know this has happened with respect to Bar grievances. Has it happened with respect to JQC grievances? It's reasonable to ask the question and try to find out.

I would like to know: Has any Florida Supreme Court justice gotten in contact with any of these Commissioners and said, "There's something going on down there. You need to take care of it"? If it has happened, it would be, obviously, a denial of my due process



rights. That's one of the things I want to ask them.

I want to ask them what part did they play in the substitution of the individual members of the Commission who have recused themselves for being biased against me.

If you will remember, one of my first objections at the hearing was this: I object to this Commissioner and that Commissioner and that Commissioner, because they were replaced with the participation of the Commissioner who recused himself. Do you remember that objection -- strike that. I hope you remember that objection.

Now, guess what? The Bench and Bar Commission has just released a report to the Florida Supreme Court recommending something. One of the things they have recommended -- and I didn't know this at the time that I made the objection. One of the things they have recommended is a change in that rule. They have recognized how fundamentally unfair it is for a biased or prejudiced member of the Commission to participate in the selection of his replacement. I need to ask that question.

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I want to know how these motions are heard. I want to take the testimony of these individuals on the Motion Commission --

excuse me, Committee. Does just one member decide what's going on? Do they do it by telephone? Have they ever noticed a judge of the hearing? Have they ever heard argument? I would like to also ask, "Have you ever granted one?"

I had one attorney who was -- participated in the Bench and Bar Commission tell me that he used to be a special prosecutor for the Commission. And I asked him -- I said, "How does the Motion Committee work?"

Do you know what he said? He said, "It's simple. You make your motion, they deny it. That's the procedure."

I want to ask them if that's true. "Have you ever granted one? How often do you grant one as opposed to denying it? What process is used?"

I want to establish that contrary to the rules, which make public all the meetings, all the proceedings after formal charges -- I want to establish that the full Commission approves or disapproves the Motion Committee's decisions



in private; that the judge is not allowed to go and argue to the full Commission and say, "The committee is wrong." No opportunity

to be heard, no opportunity to argue, in contravention of Chalk v. State -- the decision in Chalk v State.

I want to ask Mr. Bostic questions. I've got a lot of questions I want to ask Mr. Bostic, because I do not believe -- and I don't want to hurt his feelings -- I do not believe he has proceeded with due caution in this case. I don't believe -- I've got two of the most critical witnesses of the cases that were dropped against me. During depositions, it was learned that Mr. Bostic or Ms. Schumacher or Mr. Stan --

MR. BOSTIC: Jacobson.

JUDGE GRAHAM: -- Jacobson never talked to them. Never talked to them. They filed complaints that rise to the level of constitutional proportions to remove an elected public official and never talked to the people who were supposedly aggrieved.

And he said he was dropping these to streamline the case. He's dropping them



because when I took their depositions, their testimony was contrary to what he thought it was going to be.

MR. BOSTIC: That's inaccurate.

THE CHAIRMAN: Well, let's not argue the point. Let's move on.

JUDGE GRAHAM: The point is this: In Egan v. DiMonio, Florida 294 So.2d 639, the Supreme Court of the State of Florida said that where attorneys get deeply involved in the investigative portion of the case -- such as Mr. Bostic and Ms. Schumacher -- that they then become subject to deposition and testimony.

See, Mr. Bostic and Ms. Schumacher have not sat in a law office and then just reviewed notes from investigators and put together their legal theories and their case. They've gone out there and they actually participated deeply in the investigation of this case. And the Florida Supreme Court says, "Attorneys, if you want to do that, fine; but then you can become witnesses." I want to take their testimony. I want to show the Commission how poorly this case -- and how rushed it was done and how poorly it was prepared for them.



I want to go through and ask him questions about these cases that were dismissed, because I think you will find that when -- I'm going to go through and i'm going to put evidence in with respect

to some of these cases that were dismissed. I've got the case files and the transcripts. Because when the Commission sees what actually happened, the real words out of my mouth with respect to those cases, they're going to realize that this fellow has not done his job and that he has dragged you into -- one of the reporters said -- "the trial of the century" that didn't need to happen.

Mr. Bostic keeps saying over and over again, "Well, why doesn't the judge just take the witness stand and tell his side of the story?" You don't know how much I'd like to do that. I would love to do that. But it's not my burden, first of all, and it's improper for him to say that it's my burden to disprove the charges.

THE CHAIRMAN: Judge --

JUDGE GRAHAM: It's his burden --

THE CHAIRMAN: Judge, excuse me. That's



not an argument. Whether or not you take the --

JUDGE GRAHAM: But he's making it an argument.

THE CHAIRMAN: But, I mean, I'm not paying any attention to that. You have the right to go on the stand or not. I mean --

and if you don't go on it, it is not going to make one little difference to us, so let's move on.

Where I'm at now is -- you've given grounds why you want to put on -- well, the evidence of the Commissioners' testimony, and I understand what you're saying. What I'd like to go through -- is there anything that we talked about that we've missed? In other words, in his summary about all the witnesses, is there anything --

JUDGE GRAHAM: I'm proceeding.

THE CHAIRMAN: Okay.

JUDGE GRAHAM: I'm proceeding. And I would very respectfully ask permission just to finish that thought for the federal courts, because they're going to be reading this record and --

THE CHAIRMAN: I'm not going to allow you

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to do any more argument on that, Judge. I think you've made your point clear, and we understand it. I would like to move along with the reasons we're here today.

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* * *

JUDGE GRAHAM: I wanted to clarify something I said earlier about preserving a record on appeal for the federal courts. Among those is the United States Supreme Court, wherein I intend to file a petition for a writ of certiorari if the Commission ultimately finds me guilty of any misconduct and the Florida Supreme Court agrees with them.

And I'm at a loss to understand how the Florida Supreme Court -- excuse me, the United States Supreme Court -- is going to have a record on appeal of my affirmative defenses if my affirmative defenses are being tried in some collateral circuit court. I just don't -- it seems fundamental to me that -- if the State of Florida has created a procedure where a person can be charged with misconduct and is not allowed affirmative defenses within the



framework of that procedure, then there is no way to preserve that record on appeal.

I can't go to circuit court and allege affirmative defenses, because there will be no one in circuit court charging me with anything.

Now, if Mr. -- I might be willing to acquiesce to that proposition of law if Mr. Bostic is willing to stipulate to a stay of these proceedings while I develop my affirmative defenses in some other collateral forum.

Mr. Bostic, are you willing to do that?

MR. BOSTIC: No.

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* * *

I want the Florida Supreme Court, the U.S. Supreme Court to know how far a Commission that's constitutionally empowered like this one can go to basically deny public officials their right to free speech by selectively prosecuting them.

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* * *

And I'm further charged with saying, "You cannot separate morality from the law," which astounds me. And I want the United States Supreme Court to know that in the State of Florida, a judge -- under this vague of code and this type of unconstitutional Commission -- will actually go to the point of saying that a judge

should be impeached from office for stating, "You cannot separate morality from the law." I want that in the record.

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And I would renew all of my previous objections to these proceedings, to the fundamental lack of fairness of them, and to the denial of my due process rights to make a defense against these false and trivial charges. End of objection.

* * *

**Excerpts**

**from**

**Petitioner's Show Cause Response**

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,

CASE NO. 80,273

NO. 91-415

_____/

**SHOW CAUSE RESPONSE**

## CONSTITUTIONAL CHALLENGES

The Respondent renews all previous objections made to the Commission based upon the deprivation of his constitutional rights as guaranteed by both the State and Federal Constitutions. In addition to all constitutional objections previously made the Respondent assigns as constitutional error the denial of his Motion to Dismiss, his Amended Motion to Dismiss, and his Second Amended Motion to Dismiss. He incorporates herein by reference the following Third Amended Motion to Dismiss and requests that the Court grant it or in the alternative reject the Findings of the Commission based on the constitutional infirmities set forth therein.

From the protection of the United States Constitution the Commission can not escape.

The Respondents Third Amended Motion to Dismiss and Memorandum of Law in Support thereof proceeds as follows:

**Excerpts**

**from**

**Petitioner's Second Amended Motion to Dismiss**

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A

JUDGE, NO. 91-415

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

**SECOND AMENDED MOTION TO DISMISS**

Comes now Gary G. Graham, County Court Judge, and moves the Florida Judicial Qualifications Commission (hereinafter the "Commission" or the "JQC") to dismiss the Notice Of Formal Charges filed against him and served by mail on the 7th day of August, 1992, and the Amendment thereto filed October 26, 1992.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z.

* * *

- PAGE 6B -

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**GROUNDS**

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State



and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and

prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 1B, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to charges 4A, 4B, and 4E, the JQC lacks jurisdiction for the reason that these widely publicized incidents occurred more than three years ago during the Respondent's first term of office (hereinafter referred to as "Ground Six").

7. As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges (hereinafter referred to as "Ground Eight").

A 334

**Excerpts**

**from**

**Petitioner's Reply to Commission's Reply**

**EXCERPT FROM PETITIONER'S REPLY TO COMMISSION'S REPLY**

**BEFORE THE FLORIDA SUPREME COURT**

INQUIRY CONCERNING A

JUDGE NO. 91-415

CASE NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

/

**REPLY TO COMMISSION'S REPLY**

**CORRECTIONS**

Due to the short time allowed the Respondent to research, draft and file his Show Cause Response his Third Amended Motion to Dismiss and supporting memorandum contained certain errors and deleted pages. Accordingly the Respondent incorporates by reference and attaches hereto his Fourth Amendment Motion to Dismiss and Memorandum of Law in Support of Fourth Amended Motion to Dismiss. The Findings of the Florida Judicial Qualifications Commission should be rejected based on the Constitutional infirmities set forth herein.

**- Note: Excerpts from the Petitioner's Fourth Amended Motion Dismiss Immediately Follow -**

**Excerpts from Petitioner's Fourth Amended Motion Dismiss**

**BEFORE THE FLORIDA SUPREME COURT**

INQUIRY CONCERNING A
JUDGE NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

CASE NO. 80,273

**FOURTH AMENDED**

**MOTION TO DISMISS**

Comes now Gary G. Graham, County Court Judge, and moves the Florida Supreme Court (hereinafter the "Court") to dismiss the Formal Charges and all subsequent amendments there to filed against him by the Florida Judicial Qualifications Commission (hereinafter the "Commission" or "JQC") in the above styled cause.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z. The Exhibits are contained in 7 volumes labelled "Exhibits to Show Cause Response and Third Amended Motion to Dismiss" on File with the Florida Supreme Court, Case NO. 80,273.

**GROUNDS**

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process.



Rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and

prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 4J, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by not only refusing to allow him to present evidence or argument on his Eleven Affirmative Defenses (which include among other things the above stated constitutional challenges) but also refused to allow discovery of the facts which would be necessary to support the Respondent's affirmative defenses or the above stated constitutional challenges. It did so by quashing the deposition and trial



subpoenas of past and current members of the commission, its office staff, its special and general counsels, its investigator, and numerous other witnesses having information related to these constitutional challenges.

7. As to all charges the JQC is an unconstitutional body and its rules are an unconstitutional violation of the Respondent's Federal and State due process and free speech rights for the reasons stated in the Respondent's Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B and attached hereto as Exhibit 172.

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**AS TO GROUND ONE**

of speech.

During the hearings held in Inverness, Florida between January 29, 1993 and February 26, 1993 to consider various untrue allegations of unethical conduct filed by the JQC the JQC would not allow evidence or testimony related to the Plaintiff's affirmative defenses.

The affirmative defenses were as follows:

**FIRST AFFIRMATIVE DEFENSE**

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal

Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

**SECOND AFFIRMATIVE DEFENSE**

The Florida Code of Judicial Conduct is so vague that a



reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

**THIRD AFFIRMATIVE DEFENSE**

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida JQC Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

**FOURTH AFFIRMATIVE DEFENSE**

The JQC has violated the State and Federal Procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two

members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

**FIFTH AFFIRMATIVE DEFENSE**

As to Charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

**SIXTH AFFIRMATIVE DEFENSE**

As to all charges occurring before the Respondent Judge's current term of office, the JQC lacks jurisdiction for the reason that these widely publicized incidents



occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

**SEVENTH AFFIRMATIVE DEFENSE**

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited by ex parte communications.

## EIGHTH AFFIRMATIVE DEFENSE

The charges against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct

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**Further excerpts from Petitioners Reply to Reply**

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Respondent advised the Florida JQC that the hearing of

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his defense would require approximately six months. The Florida JQC issued an order stating that "Four days have been requested for the conclusion of the hearing." At the beginning of the Respondent's case the Commission gave the direct order that "We are starting today and we are going to complete this hearing by Friday" (T, P1473, L 6). Respondent attempted to proffer an objection based on the Decisional Authority of U.S. vs. MacLain 701 F. Supp 1544 but the JQC would not allow his proffer. (T, P 1476, L 25).

* * *

**NOTE: The following is the excerpt from the proceedings referenced above where Petitioner attempted to make his *MacLain* objection but was cut short. Page 1473 is the beginning of the second four day trial session which began on Tuesday, February 23, 1993. The previous session had lasted from January 26, 1993 to January 29, 1993.**

- PAGE 1473 -

PROCEEDINGS

THE CHAIRMAN: Good morning, everyone. The Florida Judicial Qualifications Commission is back in session on this matter in reference to Judge Graham's Supreme Court case, No. 80,273. We are starting today, and we are going to complete this hearing by Friday.

The Commission is here as they were before, but we have a different seating arrangement, and I would like to once again introduce the Commission members so we know who is who and where they're sitting.

And I'm going to start at the front row on the left, and there sitting is Mr. Rut Liles, who is an attorney from Jacksonville,

appointed by the Board of Governors of the Florida Bar, past president of the Florida Bar.

Next to him is Judge Kaney, who is from Orange County, a circuit court judge. He is in charge of the judges up there in Tallahassee, and he is the Vice Chair of the Florida Judicial Qualifications Commission.

Sitting next to him is Judge Baskin, from Dade County, the Third District Court of Appeal. She is chairperson of the District



Court Conference.

Sitting next to her is Mr. Griner, who is from the Jacksonville area. He was a former gubernatorial appointee and is an ad hoc member sitting here.

Next to him is the immediate past chairperson of the Florida Judicial Qualifications, from the First District Court of Appeals out of Tallahassee, Judge Klein Wigginton.

Sitting next to him is Ms. Sybil Barnes, who is a former gubernatorial appointee to this Commission, an ad hoc member, who is from the Tampa Bay area and a former educator here in the State of Florida.

Sitting in the back row, starting on the left, is Judge Demers, from the County Court in Pinellas County, who is chairperson of County Court Judges.

Sitting next to him is Mr. Stanley Tate, from Dade County, a businessman in the state, and he is a gubernatorial appointee.

Next to him is Judge Marvin Gillman, a County Court judge from Dade County. I think he has been sitting on the Commission the



longest here.

And next to him is Nancy Mahon, who is from the Jacksonville area. She is a gubernatorial appointee, and she is involved in civic activities in the Jacksonville area.

Next to Nancy is Judge Miette Burnstein, who is from the Circuit Court Conference, past president of that conference. She is a judge in the Broward County area.

Last but not least, former chairman of this Commission, a businessman from the Palm Beaches who is involved in statewide activities, Mr. William Clark.

That is the Commission members there. And my name is Joseph Reiter. I am an appointee from the Board of Governors of the Florida Bar, and I will continue presiding as Chair.

Sitting in front of me is Ms. Maciel, our court reporter. Next to her, on my right -- I think I see her -- is our clerk, Marcia Michel. Sitting to my left is the Executive Director of the Florida Judicial Qualifications Commission, Brooke Kennerly, and our Special General Counsel, Mr. Roy Rhodes, who will be assisting



the Chair and the Commission as we proceed further in this matter.

Let's see --

JUDGE GRAHAM: My name is Gary G. Graham, County Court Judge --

THE CHAIRMAN: Judge --

JUDGE GRAHAM: -- for Citrus County.

THE CHAIRMAN: -- one second, please.

And I wanted to introduce Rollie Budd, our bailiff, who is going to be helping us. And the two other gentlemen -- I forgot their names, and I apologize.

THE BAILIFF: John Barry and Doug Alexander.

THE CHAIRMAN: We thank you very much for assisting the Commission.

Now, I recognize that Judge Graham is here representing himself, and Mr. Bostic is representing -- as Special Counsel here.

Now, before we begin proceedings, I have been requested to resolve an issue involving the State's Attorney's Office, and Mr. Dean is here to make a presentation about witnesses. And I want to take care of that matter now.

JUDGE GRAHAM: Excuse me. I would like



to voice -- I would like to voice --

THE CHAIRMAN: Judge, I am not going to take any argument from you. I am going to take care of this now.

* * *

**Excerpts**

**from**

**The Transcription of the Petitioner's**

**Rule 6(b) Hearing Before the JQC**

PUBLISHER'S NOTE:

The following page is unavailable for filming:

50p.

Let me say this just in further explanation of that objection. Folks, you are the investigators of my case. You have been meeting -- I don;'t know how many times you have met with Mr. Rhodes, maybe Mr. Bostic, other individuals and discussed complaints made about me. I have no idea what was said to you. I don't know what kind of newspaper editorials have been sent to you.

I have a particularly bad -- let's say the newspapers in my area have a particularly bad opinion about me -- an unfair opinion about me. They are constantly writing extremely hateful, distorted and untrue editorials about me. I have gleaned from certain newspaper reports a well-founded suspension -- suspicion that some of these newspaper editorials have been sent to you.

Do I know that for a fact? No, I don't. That's the reason I wanted to ask you. Why do I want to know if those newspaper editorials



have been sent to you? Because they poison you mind. You are going to be the trier of fact and the judge of the issues of law in

my case. You will be ruling on close questions of relevancy and other matters of evidence and procedure in this case.

What thoughts about me have been put in your mind that might prejudice and against me? I don't know. What people have talked to you? Who has called you on the telephone? Mr. Reiter, it's my understanding that an -- that anybody can call any member of this panel and talk to them about a judge. Is that correct?

VICE CHAIRMAN REITER: Judge, let me explain to you that you are here on allegations that have been published to you only, number one. Number two, this Commission will consider those allegations and any information that deals with those facts that are alleged as presented here today, and we will make our rulings accordingly. This is not a trial today. Do you understand that?

JUDGE GRAHAM: I understand.

VICE CHAIRMAN REITER: It's not presentation of evidence. And it's at such



time as and if, and only if, there is a trial that you may make whatever procedure objections you want. What we are here for

you to do today, if you are so willing to do so, is to respond to those allegations in there.

JUDGE GRAHAM: Right.

VICE CHAIRMAN REITER: And I can you assure you, if any member of this Commission felt they should recuse themselves, they would have done so. So you may proceed sir.

JUDGE GRAHAM: Well, I think my objection -- the point of my objection has been missed. This is an official proceeding before the Commission. At this time, I would like to know what matters have been brought to your attention ex parte; what matters have been discussed with you; what editorials have been shown to you. At this time, I would like to know what sheriffs, State Attorneys or judges may have discussed something with you.

And, again, I don't know for sure they have. But I should have a right to know what type of communications have been made to you so that I can fully explain and resolve any questions in your mind about the propriety of



my conduct as a public official. And it is fundamentally unfair that this Commission operates in secrecy, is able to engage in ex parte

communications about the judge, about his reputation and have possible relationships to the individuals who are complaining.

I am very interested in knowing if any members of this Board are in the newspaper business. I am very interested to know if they have been contacted by other people in the newspaper business and that my reputation in the press has been discussed at your meetings. If it has, I want to know that for two reasons.

One is to allow me to answer them, to remove that poison from your mind, to remove that prejudice. The other reason is to disqualify you if it rises to the level of a disqualification. And Judge -- it is Judge Reiter? Is that correct?

VICE CHAIRMAN REITER: No, Joe Reiter.

JUDGE GRAHAM: Mr. Reiter, I respect your opinion if you think that anybody thought they should be off this Board,that they would do it voluntarily. I respect that



opinion. But I believe that it is probably more appropriate for me to be able to know what type of relationships and communications have been made to you and to allow me to make those motions if I think they are appropriate.

Just as support for my objection, I would like to point out to you the fundamental unfairness that has already been demonstrated to be by this Commission. First of all, I was sent a Notice of Investigation and given 14 days to prepare for eight charges, some of which went back almost four years, many of which did not have transcripts available, and was set for a hearing in Fort Lauderdale with approximately 14 days notice.

I had an attorney who was very familiar with the Commission, who once was a member of the Commission, call the counsel for the Commission and ask for a continuance. He assured me that that type of continuance is routinely granted when cases are set on such short notice. That request was denied.

That motion for a continuance was well founded. The proof that it was well founded is that ultimately it was granted. But the



Commission required me to travel all the way down to -- where was it? Fort Lauderdale?

MR. TATE: West Palm.

JUDGE GRAHAM: West Palm Beach and spend almost $600 is expenses to go down and simply ask you for the time to

prepare the information that would be necessary for you to make a correct decision.

When I did that, the Commission sent me out in the hallway for 45 minutes and discussed my case. And when I cam back this Commission didn't say, "Judge, we appreciate your arguments of how important our business is; we appreciate how important this decision is to the people of Citrus County, to you personally and to the justice system of Citrus County; and because we want you to have enough time to prepare, we're going to grant you this continuance."

You didn't say that. You said, "Judge, we're going to grant this continuance but only because we want to pile it on you higher and deeper." And you did it through some euphemism about second base. Then I go back to Citrus County. I continue to work hard to



gather this information.

And I write a letter to Mr. Rhodes, and I say, "Please advise the Commission and ask them if I can have six hours to explain all of these charges. That's how long it will take them -- take me to

explain to them not only the particulars about the cases, but the politics involved in Citrus County -0- Citrus County judicial system."

He sent me back a letter saying, "No, you can only have three hours. And by the way, second base is 24 additional charges." This Commission granted me after -- this Commission -- this Commission must have spent hundreds of hours on this complaint. Sheriff Dean reported in the newspapers that Mr. Bostic has been down there for weeks investigating this. Now, I don't know whether that's true or not; he reported it.

Considering the number of cases, you folks must have spent hours talking me. Some of these must have been filed four years ago. You spent 45 minutes alone just discussing my continuance. And after all the time that you have spent hearing the other



side of the story, not knowing a thing about me, not knowing my side of the story at all, you give me three hours to explain 32 complicated offenses; 5.6 minutes per charge.

Now that's fundamentally unfair. You're not going to hear my side of the story in 5.6 minutes. And then I come to the

commission. I ask to have an assistant, and I'm denied an assistant. I will grant you that you have remedied that fundamental unfairness by providing me a no-expense transcript, and I do appreciate that and thank you for it.

At this time, I 'm going to make both -- I'm going to proffer to you both a written and verbal statement. My written statement I'm going to read to you.

VICE CHAIRMAN REITER: You could have passed that up to us. That's fine.

JUDGE GRAHAM: That's all right. I need the exercise.

VICE CHAIRMAN REITER: We're going to have -- this is a statement that you're offering that you're going to be presenting?

JUDGE GRAHAM: This is my 6(b) written

* * *

# DOCUMENT 11

## Excerpts from the Deposition

## of

## Hon. Woodrow Beauchamp

A 360

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

No. 91-415

Honorable Gary G. Graham

Citrus County Court Judge

# DEPOSITION

of

THE HONORABLE WOODROW O. BEAUCHAMP, JR.

ADVANTAGE COURT REPORTING SERVICES
605 Northeast First Street, Suite E
Gainesville, Florida 32601
(904) 371-7209

Q. Okay. Well let's just -- We would have to include in our hypothetical that you have a large law firm. Okay? Now, your wife is a junior member on the law firm. She's a junior member, just hired. A case comes before you. The law firm represents one of the litigants, not your wife, the law firm. Does the ethical code in the state of Florida require you to recuse yourself?

A. Well, I think that's asking me, again, to determine the ultimate conclusion in the case and that would not be appropriate for me to do at this time based on the limited information I have. I do understand that under the current canons there is a question that would be a question in my mind about the propriety of handling a case if my wife were in the law firm, and I believe -- I'm just going from memory -- I believe there may be a case that specifically says you cannot do that. I would certainly research it carefully before I got involved in that.

Q. Okay. What if I were to tell you that the Committee on Standards of Conduct Governing Judges said that you did not need to recuse yourself?

A. You would probably right, because you've researched it and I haven't.

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* * *

Q. Okay. Now, a second question that's a little more difficult. Okay?

Let's say the other members of the historical society want to solicit funds with a letter, and it was the historical society letterhead with all its members listed, and your name was on the letterhead. Would that be unethical for those members to use that letterhead with your name on it, to solicit funds for he society?

A. I hate to sound like a broken record, but I would certainly want to research that or contact someone in authority about the canons before I made that decision to allow my name to be used on the letterhead.

Q. So the answer is you would not know whether it's ethical or not without researching?

A. There would be a serious question in my mind without researching it. I suspect that I probably would not be permitted to

do that, but that would be a guesstimate at this time without researching it.

Q. Okay. Would it surprise you if I told you that the committee said, yes, that's perfectly okay?

A. I think I'd be a little surprised.

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* * *

Q. Hypothetical 981. Would it be unethical for your wife, in her part time to type transcripts of testimony taken at trials over which you preside?

A. I honestly don't know without researching it.

Q. Okay. Well, even after your researched it, Judge, would it surprise you to find out you probably couldn't find your answer?

A. That's possible.

Q. Would it surprise you that four members of the commission said it's okay -- I mean Committee on Standards of Conduct Governing Judges said it was okay, but four said it wasn't?

A. That wouldn't surprise me, no.

Q. Okay. So now, you're faced with a question. Your wife wants, in her part time, to type some transcripts. Okay? You

write a letter to the committee. They write back and say four members said, "nothing wrong with it; all she's doing is doing her job." Four other members say, "Oh, we have strong reservations. This may be unethical." Now what are you going to do, Judge, as a judge?

A. Well, you know, I really don't know what you want here because I, you know, I don't know what's to be expected



of me here. If you're asking me what would I do in that case, I might could speak to that. If you're asking me to substitute my judgement for hat of the committee, then that would not appropriate.

Q. They don't have an opinion.

A. If you're asking me what I would do --

Q. What would you do? After worrying about it and researching and finding out that answer, what would you do?

A. I think that I would probably err on the side of caution and not do it.

Q. Even though there might not be anything wrong with it, whatsoever?

A. Right. Exactly. I might preface that -- I mean I might qualify that by saying that if, you know, if the committee was uncertain in their ruling, then the matter of the subject to review somewhere down the road by the Supreme Court or other appropriate reviewing agencies. And there is a serious question there, when you've got a split committee decision. And I suppose that one could interpret that either way they wanted to, but realizing that their decision might not be upheld if it were reviewed later. So I -- say, I would probably err on the side of caution and not do that conduct which is questioned, because, as you mentioned earlier, I'm elected to this office. It means a great deal to me. And I value that office and I don't want



to put myself in a posture of being questioned about any of my conduct from an ethical standpoint.

Q. Don't you think it's kind of scary that four members of these experts will say it's good and four members will say it's bad. Doesn't that frighten you a little bit?

A. Well, it concerns me that, you know, that you don't have a definitive answer in those kind of cases. But if they

disagree, they disagree. It's like an appellate court decision, up there. You may have a four-three decision on the Supreme Court. If that happens, it happens, you know. That's their job to make that decision and apparently, that's the way they wound up, four and four from what you tell me.

Q. Does it concern you that the JQC, at any given time, might have thirteen that agreed with the four that were against it, but, at any other time, they might have thirteen members that agreed with the four members that were for it? Does that concern you?

A. A lot of things concern me. Yes sir.

Q. Does that concern you?

A. You mean in a positive sense or a negative sense?

Q. Well, I mean does it bother you that you don't know how the JQC was going to rule from one year or one decade to another?

A. Well, I could say it probably concerns me, as a



lot of other things concern me. Yes, sir.

* * *

* * *

Q. I see. How about this hypothetical, 828. This is an interesting one. Suppose you don't like the circuit judge that sits in Levy County. Now, that's total hypothetical. Okay? And you really think it would be to the benefit of the community, the bar, and the judiciary if someone would run against him. And you know an attorney that you think would make a good judge. Would it be unethical, in a private conversation, for you to suggest to him and encourage him to run against the incumbent judge?

A. Are you talking about just talking to another attorney who is a friend of yours?

Q. Right. In a coffee shop.

A. Just you and him.

Q. You and him. You say something to the effect of "I think you should run against him. I think it'd improve the bar. I think it'd improve the bench and that the community would be better served.

A. I believe it was recently that the Federal District Court ruling not too long ago which did not deal with this particular issue

but it dealt in general with the rights of free speech of the attorney -- not of the attorney but that of the judges when they were candidates. And I believe that the concern for the right of free speech would protect the judge's right to discuss privately with friends of his -- his views on a lot of issues, not just court



issues, but all kinds of domestic issues and maybe, you know, just a multitude of issues because I think the right of free speech would protect that.

Q. So you believe that it would be ethical and protected by free speech to solicit this attorney to run against the judge?

A. Well, you know, we're talking about a discussion, and you're talking to him one on one about it, and you're expressing your views and he's expressing his views, and I realize that the rights of judges have been severely -- or not severely but rather amply limited because they sit on the bench and we're suppose to retain impartiality. But I do not believe the limitations on judges have gone so far as to limit their right to private conversation with their friends or family members.

Q. Including soliciting an attorney friend to run against the judge?

A. You know, you may be talking about some rule that says they can't do that, but I'm not aware of one.

Q. Okay.

* * *

JUDGE GRAHAM: I have one last question.

BY JUDGE GRAHAM:

Q. Does it concern you that eight of the ten members



of the Committee on Standards of Conduct Governing Judges, under that exact hypothetical, consider that to be unethical? Would that concern you?

A. Well, there again, you know, if I were sitting where they were, and had all the facts before me and they were different as I have heard them now today, as you've stated hypothetically, I might have been in their number. But just from the limited information I have, I told you how I felt and that means under these circumstances their opinion would differ with mine. And so, in that sense, I guess I would be disillusioned to think that folks

disagreed with me, but I've found that to be true over the years. So it concerns me when folks disagree with me but I'm not taken aback by that. I've been overruled a time or two by the appellate courts.

Q. Now, we're not talking about overruled. These people wanted to take away your job.

A. Well these people here, you said it said that there was certain comment that couldn't be. I didn't know anything about them saying taking away a job but you know that --

Q. It's unethical. You understand that if you violate the code of ethics, you can be -- your job can be taken away from you?

A. If that's their ruling and I'm not familiar with



it, so that, you know, if that's their ruling as you say it is --

Q. Okay. It's 828. Opinion number 828, cited May 13th of '82. I want to ask you something. Knowing their opinion now -- Okay? Would you now be afraid to solicit an attorney to run against another judge?

A. Yes, sir. I'd be concerned about it. I would. I don't -- You know, I don't mean to be meek about it or weak backboned or anything like that, but I do try to adhere to the law and I try to adhere to the principals of the law and the canons that are applied to me and my office. I try to abide by the law. So if that's the law, then I would probably be reluctant to do those things that might jeopardize --

Q. So even though you think it's a matter of free speech, you would -- might be reluctant to solicit an attorney friend to run against a judge because you now know about opinion number 828. Is that correct?

A. What am I supposed to do, go out and violate the law? Is that, you know --

Q. I understand.

A. You asked me do I have a concern about it. Yes. I have a concern.

Q. I sympathize with your concern. I have the same concern. . . .



* * *

Q. That's 8215. Could you, as Levy County judge, properly serve on the board of directors of the Mothers Against Drunk Drivers? Would that be ethical?

A. Well, whether I think it's ethical or not, personally, I believe that the current canon is against that as I understand it. I would say, no, I cannot serve on that board under the current state of the law as I understand it.

Q. If you were elected to circuit court judge next year, could you serve on the board of directors of the Mothers Against Drunk Drivers?

A. My answer would be the same. I don't think that would change the circumstances. How else is there to say that? I don't think that would change my answer.

Q. Well, the commission split all over the place including some of them said that it depended on whether or not you were county judge or circuit judge. Does that surprise you?



A. Does it surprise me? I think it surprised me a little bit, yes.

Q. Yeah? Four were of the opinion a member of the judiciary might serve as a board member of MADD. The majority said there might be problems with a county judge assigned to a criminal division. Okay? It goes too far to say that no judge can serve. As to whether a judge not likely to try a DUI cases could serve, a majority found no impropriety. So they really don't know.

A. I really don't want to comment on the competence of their decision. They are the right and the wrong on the subject. I think that speaks for itself.

Q. That was 8218. . . .

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Q. Let's say an attorney files a motion and gets a case dismissed in front of you in trial court, and then when the case goes up on appeal, he tells his client, "No money. No appeal. Handle it yourself." And then it gets reversed and you wind up back in court with the trial attorney -- a new trial attorney and the defendant. And they're all saying well, we got it reversed on appeal, Judge. And you say, "Who represented you on appeal?"

And the defendant says, "Nobody." You think it would be unethical to remind the attorney of his duties to represent his client on appeal? Do you think it would be unethical to remind him of that?

A. Unethical? You mean do I think it's unethical or do I think --

Q. You said --

A. -- that the law says it's unethical?

Q. -- you believe that the current code of conduct for judges in Florida would make it unethical to say, "Mr. Attorney, you have a obligation not to abandon your client on appeal."

A. Well, if they've spoken to that, I would hope that I could research that and find the answer to that in their



rulings. It's a little bit like the story of the old Greeks that argued about how many teeth a horse has in his mouth. If they'd open his mouth and count them, they could find out. And so if the JQC has ruled, then I'd want to go to the books and see what their rule was, and I would try to be guided by that.

Q. I understand that, but based on your understanding of the code now, would it surprise you if that was unethical conduct?

A. Would it surprise me if the JQC had determined it to be unethical? Is that your question?

Q. Yes.

A. I think it would if it was in a vacuum, if that was the only -- if that was just a sterile environment that I was considering right there and there were no other extenuating circumstances.

Q. Okay. Now --

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Q. Do you perform weddings?

A. I have. Yes, sir.

Q. And you've accepted pay for them?

A. I just answered that.

Q. I can't remember your answer.

A. I said I have in the past.

Q. Uh-huh. And when do you usually perform your weddings?

A. And generally, let me qualify that. I think when I did ask, that was more like -- it was like a gratuity. It wasn't a charge.

Q. I understand.

A. I do not charge for that.

Q. I understand.

A. And we had a rule, one time, that said the judge could receive gratuities.

Q. Right.

A. Now, I don't know if there's a limitation on that or not.

Q. But when do you normally do your weddings?

A. Well, over the years, I've done them in all --

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lots of times and places. Certainly some in the office, you know.

Q. In your office?

A. Yes, sir. But I've been called out to do them, you know, at other places, too.

Q. And the ones at your --

A. Other gatherings --

Q. I understand. I do it also. And, at your office, have you accepted gratuities for ones that you performed in the office?

A. I have in the past, yes, sir.

Q. Okay. And was this during working hours of the day between eight and five?

A. Sometimes, yes, sir.

Q. Okay. Now, would it surprise you to learn that the committee of standard of conduct judging -- governing judges thinks that's unethical? Would that surprise you?

A. No. I think that's an arguable issue. I think that there's two points of view on that.

Q. Of the nine members of the Committee on Standards of Conduct, eight felt the opinion should broaden to add that, "the performance not detract from your judicial duties and that the judge not accept compensation for performing marriages during normal working hours at the courthouse.

See, they -- According to them -- Now, Judge, I'm not



faulting you. I think that's ridiculous. Okay? Because, you know, a judge doesn't work minute to minute, hour to hour. There's time when he, you know, he's taking a break. And to say that somebody can't walk in his office and perform a wedding and offer to

give him ten bucks and that that's unethical, I think that's entirely absurd. So I'm not criticizing you. But the point is that you have done something the Judicial Committee -- eight members consider unethical. Does that concern you?

A. Well, like I say, you know, some years back there was a ruling that said that you could. Now if they've changed that, you know, yeah, that, you know, that would concern me. But I can understand their point of view. There's two school of though on that. And I presume, from the tenor of your question, the JQC has not spoken on that yet.

Q. Well, this is the -- this is a committee of experts and this is eight out of nine. This is one that they are more certain of.

A. Well, you're looking at the committee decision and the JQC is not spoken on. But I'm not surprised that there would be that point of view because I believe on that particular issue there are two schools of thought.

Q. And you're not angry about that? That they would say something as innocuous as that -- that eight members of

this committee of experts say that you've done something that they consider unethical. You're not -- as innocuous as that, and you're not angry about it?

A. Judge, I don't, you know, want to be unduly vague. But I don't think it's a relative issue whether I'm angry or not, you know, at this point. I don't think that's appropriate.

Q. It probably is not, whatever your answer --

A. I would refrain from answering.

Q. I agree with you. But are you surprised? Or did I already ask you that?

A. I'm not surprised because there are two points of view on that. And certainly you've indicated that the committee had a conflicting point of view there but --

Q. Now, do you understand that if there was somebody in this county that had a grudge against you, maybe somebody that ran against you in the last election if you ever had an opponent, or wanted to run against you in the next one, do you understand that they could file -- fill out a JQC report based today on your deposition?

A. Perhaps. But then it's kind of like filing a complaint on a criminal charge with the state attorney. You can file a complaint

on virtually any and everything and the state attorney has to determine whether there's a basis for those.

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Q. That's right. And Judge Graham might be charged where Judge Beauchamp might not.

A. Well, I think that's an over simplification. I think Judge Graham or Judge Beauchamp, either one, might be charged under some given circumstances.

Q. Judge, fortunately for me, I've never ever accepted a gratuity for a wedding. But I guarantee you something, if I had ever accepted a gratuity for a wedding, like at eleven o'clock down at my courthouse, and they filed a complaint against me, I can assure you it would be charge number forty-seven right there.

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# DOCUMENT 12

## Excerpts from the Deposition

## of

## Harry Lee Coe, III
## (former Circuit Court Judge)

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE

NO. 91-415 SUPREME COURT NO. 80,273

HONORABLE GARY G. GRAHAM

CITRUS COUNTY COURT JUDGE

_____/

| | |
|---|---|
| DEPOSITION OF: | HARRY LEE COE, III |
| TAKEN BY: | The Honorable Gary G. Graham |
| DATE: | January 21, 1993 |
| PLACE: | Office of the State Attorney for Hillsborough County<br>Hillsborough County Courthouse Annex, Fifth Floor<br>Tampa, Florida |
| TIME: | 4:30 p.m. - 6:20 p.m. |
| REPORTED BY: | Ekaterine L. Trofimov, RPR-CP<br>Notary Public<br>State of Florida at Large |

* * *

Q Do you believe that if a judge would not allow a defendant to cohabitate with a girl friend who he had beaten up -- in other words, no contact with the victim -- do you believe that would be illegal or unethical under the code?



A No. There's no way under the code that's illegal. It might run afoul of the second district, but that's not your question. But I don't think that would run afoul with the second district.

Q Now, if during the proceedings, where a judge said you can't live with an unmarried -- a victim -- now, this is a battery case, and the unmarried female is the victim -- and a public defender were to say something like, "Judge, you're trying to impose your morality into the courtroom," do you believe that under the Code of Judicial Conduct it would be unethical for a judge to state, "You can't separate morality from the law"?

A No.

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Q Now, you would also like to make some derogatory comments about one of your opponents with respect to his or her drinking problem, their prior criminal investigations and convictions. Would you be allowed to do that?

A I see nothing that prohibits that under Canon 7, and I don't -- there doesn't appear to be any other canon that would deal with it.

Q You would also like to make comments concerning your opponent's prior to employment as a public defender and the difference in your conservative philosophy as compared to his or her liberal philosophy. Would there be anything wrong with that?

A I don't see any prohibition in Canon 7.

Q Additionally, you would wish to comment on your ability to efficiently handle a heavy case



load as compared to the inability of one or more of your opponents to do this. Would there be anything wrong with that?

A I don't see anything wrong under Canon 7 as so stated.

Q Now, would it surprise you that under Opinion 90/18 that six committee members on the Committee on Standards of Conduct Governing Judges said that all -- excuse me -- that all of the things that I mentioned with respect -- starting at derogatory comments, they said that these were all contrary to the canons? Would that surprise you?

A What canon are they quoting? Do they say?

Q 7, B, the one you were reading.

A 7 what?

Q 7, B.

A B.

Q Uh-huh.

A I'd be amazed. I see nothing that would prohibit -- it's amazing to me that --

Q It's amazing to me, too, Judge.

A I mean, my goodness, are we supposed to stand silent if somebody is not doing what they ought to do? I don't see where Canon 7 says that at



all.

Q I agree with you. Your amazement is only surpassed by my own, not only at the code and these opinions but also the things I've been charged with.

A As I hear that opinion, it's saying that you cannot bring out the record of an opponent or an incumbent judge, and I don't see --

Q Alleged drinking problems, prior criminal investigation.

A I don't see where Canon 7 prohibits that. And it shouldn't prohibit it.

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Q Now, during mediation conference, do you see any ethical problem in stating to the defendant, "Mr. Antinucci, you had better settle this case because there's lots of Antinuccis in the world but only one Ted Williams"? Do you see an ethical problem with that?

A Oh, I'd have a lot of problem with that.

Q Do you think it would probably be a violation of the code?

A Oh, I would hope so.

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Q But his statement that there's one Ted Williams but lots of Antinuccis -- you would agree that that's a violation?

A Absolutely. I would hope so. . . .

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Q A similar hypothetical: A judge is presiding over arraignments. He makes a -- there's a motion before the court in Case Number 1. The motion is denied.

A By the defendant or defense attorney or --

Q The defense attorney makes a motion. The state attorney is there. The motion is denied. There's only one state attorney in the courtroom. Case Number 2 is called to order. The defense attorney for Case Number 2 starts arguing his motion. The judge looks up, and the state attorney is busy arguing, out loud --

well, the defense attorney is busy arguing out loud with the state attorney.

A Number 2 defense attorney?

Q Number 1 defense attorney. In other words, the case is already over.

A We're in Case 2 now? Number 1 defense attorney is arguing with the state attorney?

Q Right. In other words --

A I'm with you.

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Q -- the judge is trying to decide Case 2, and --

A Case Number 1 attorney is arguing with the state attorney.

Q Out loud. Before the judge can get their attention and call them to order, the defense attorney yells "bull" at the state attorney and starts to stomp out of the room. The judge holds the attorney that yelled "bull" in the crowded courtroom in contempt and sentenced him to probation. Do you think that would be a violation of the Code of Judicial Conduct?

A I would certainly hope not.

Q That's one of the things I've been charged with.

A No, we're in bad shape if defense attorneys can conduct themselves that way, or if anybody can conduct themselves in that way in the courtroom -- we're in bad shape as judges.

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Q . . . book and I don't know the opinion number. You belong to an organization which is helping to restore historical buildings. You're an officer in the organization. The stationery has a -- the

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organization has stationery identifying you as a judge and being an officer of the organization. Would it be permissible on that stationery to solicit funds for the organization?

A Absolutely not.

Q Now, the committee has said, on that one, it's absolutely okay.

A I would never do it, and I cannot conceive of how they could okay that. If they do one, they've got to be -- that's inconsistent.

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Q What if the judge did this while consistently appearing in court in plaid shirts and no tie and no robe?

A The judge?

Q (Nods head affirmatively)

A That would be horrible. I would hope that would be a violation.

Q What if the same judge --

A Now, again do you want me to -- I would hope that would be a violation. I wouldn't do it, and I wouldn't agree with that. Do you want me to figure out if that's a violation?

Q I just want your best -- basically, what I want to know is -- is your understanding, without,

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Judge Coe, really --

A That's not dignified, yes. That's a violation, clearly, of Canon 3.

Q What if the same judge in open court, during arraignments, dissatisfied with what the state is --

A Is satisfied or dissatisfied?

Q -- dissatisfied --

A Dissatisfied.

Q -- with the state attorney on a particular cocaine case, were to say, in open court, publicly, "This is a chicken s-h-i-t case"?

A That's horrible. If that isn't a violation, I would be appalled.

Q A judge in court is confronted with an attorney who comes in in slacks and a leather sports jacket. He informs him that the court requires suits and ties and offers to allow him to use the judge's suit jacket in order to continue with the proceeding. Do you think that would be a violation of the code of conduct?

A Absolutely not.

Q That's another thing I've been charged with.

A Well, that's -- we're in big trouble if

people can decide for themselves how they're going to dress.

Q Would it change your mind if the coat that I lent him was a little too short for him?

A No. Any judge that acted in that fashion would be acting properly and the only way to act. I've always said, carry that to a logical extreme. If people can determine for themselves what they're going to wear, what if they start coming in naked? Is that all right?

Q Well, I almost -- I got in a lot of trouble because I wouldn't let one guy come in with naked females on his shirt, saying (expression unclear). I got a lot of flak for that one, too.

A I think the conduct is disruptive. It isn't a question of personal taste of the judge one way or the other. It's a question of maintaining the order and dignity of the courtroom. And that is clearly disruptive. It's a discretionary call that the judge should be allowed to make as to what somebody wears as long as the judge is acting reasonably in exercising discretion. And certainly in the hypothetical or the fact situation you've given me, the judge was acting very reasonably.

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Q Okay. This is a hypothetical, but I can't remember the number. It's out of the other book. You are a judge in a county. And you're unhappy with the performance of another judge. Can you have a nonpublic hearing, a private hearing, or a private discussion with another attorney, encouraging him to oppose the incumbent judge?

A Well, again I wouldn't do that, but that isn't the question. The question is whether or not that's a violation of the Code of Judicial Conduct. I think it's a violation of Canon 7. It's political activity inappropriate to a judicial office, I think clearly a violation.

Q Judge, I'm not certain, but I believe the committee went the other way on it. I think they said that because it was a private discussion, it

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wasn't really political activity and that you had a right to encourage good candidates to run. I'm not certain of that, but I believe -- that's from my best recollection.

A Well, I vehemently disagree with that.

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Q . . . The purpose of the Children's Service Council is to raise tax money to spend on children. Okay?

Now, you are a judge, and you wish to know if you can speak in behalf of the establishment of a children's service council in your county. Can you do that?

A That's an interesting question because it brings to bear the raising of money. But can you do it under the Code of Judicial Conduct?

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A Here it is. Here it is. It is here. It's 4, C -- 4 being, "A judge may engage in activities to improve the law, the legal system, and the administration of justice." And C says, "He may

serve as a member, officer, or director . . . devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an

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organization in raising funds," which is surprising to me. I did not think that was in there. "He may assist such an organization in raising funds and may participate in their management and investment, but [may] not personally participate in public fund arising activities."

Now, I wouldn't know how in the word you're supposed to interpret that. That sentence is contradictory to me, but that's neither here nor there. Under your hypothetical, you'd clearly be within the Code of Judicial Conduct to serve . . .

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Q You write them a letter and say you want to do this.

A Right.

Q How would you feel if they wrote back and said that it is believed that you can perform a valuable service by doing this

and explaining the need for the program without emphasizing the tax consequences, you should avoid giving any appearance of personally pursuing the fund-raising aspect of the referendum?

A Well, I disagree with that. If this canon that I just read was in place at the time of that opinion, I totally disagree with that opinion because it says you may assist in raising funds, and you're not even doing that. You didn't even ask



that, apparently, or whoever asked for the opinion. You just said "Can I help them -- can I encourage the development of this council?" And they gratuitously threw in about money, but they're wrong, if this 4, C, was in place.

Q Do you see any way that an individual could publicly speak about a children's services council without talking about the tax aspects of it?

A Not honestly, no. When I say -- I'm talking about, you couldn't speak -- when you speak, you must speak honestly. And if you left out the tax aspects of it, I don't think you'd be speaking candidly and honestly. A lot of people would say, "Gee, that's a wonderful idea." And then the next day you read in the paper,

yeah, it's going to cost you a million dollars. And they say, "Gee, I didn't know that." You've misled and deceived, so you must talk about that, and it is, in my judgment, under 4, C, permissible.

Q So you would disagree with the ethics committee?

A Absolutely.

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Q . . . Judge. A judge, in a small rural county, for several years drives a red pickup truck and parks it in the official parking space of the judge identifying it as the judge's parking space. He has displayed on this truck, for several years, a bumper -- a license plate. And the license plate says, "I am a coon a-s-s," and has a picture of a raccoon, with its tail raised --

A "I'm a coon ass"?

Q -- "I'm a coon ass" -- a picture of its tail raised, with a graphic depiction of a brown anus and a little black sphincter. Do you think that would be in violation of the Code of Judicial

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Conduct?

A I would certainly hope so, and I think it would be.

Q A judge handles DUI cases. On may occasions during probation violations, he's told by the defendants that, "Judge, the reason I didn't pay my fines, do my community service, or go to DUI school is because I didn't have transportation. You took my car away from me" -- which is kind of an anomaly because you're required by law to take it away. As a part of a sentence, it becomes know to you that an individual does not have transportation, and you require him, as a condition of his probation, that he obtain a bicycle for transportation. Do you believe that to be a violation of the Code of Judicial Conduct?

A I don't see anything in the Code of Judicial Conduct, in reading the black-letter canons -- not the comments -- that would seem to prohibit that.

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Q You're in court, and you are sentencing an 18-year-old individual. He has been -- he has pled guilty to drawing penises [sic] on the wall -- giant penises, with paint, on the walls of his

high school, with vulgarities. And you are also apprised that prior to his 18th birthday, during this event, he was on HRS probation as a juvenile delinquent for burglary.

A Had he been convicted of this drawing?

Q Yes. He pled guilty to it.

A And now he's before you for what purpose?

Q Sentencing.

A For the drawing?

Q Of the penises.

A Okay. Go ahead. I'm sorry. And before he had done what, now?

Q He did this while he was on probation for burglary.

A So he pled guilty to a violation of probation?

Q No. This is just the adult case.

A I got you. Just the -- defacing is a misdemeanor? Defacing is the charge, something like that?

Q It would be criminal mischief.



A All right. Go ahead.

Q Based on his record and his conduct, the judge sentences him to 60 days in jail. His mother approaches the court and says to the judge, "Every child does this. It's part of graduation," and "You're the problem."

And the judge responds, "Ma'am, I'm not the problem. You're the problem. I can tell by the way you're defending him."

Do you believe that that would be a violation of the Code of Judicial Conduct?

A No. I see no violation there.

Q Are you certain about that one?

A I see no problem with that.

Q That's another thing I've been charged with.

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Q Okay. You want to write a book report --

A As a judge?

Q As a judge, you want to write a book report on another book, titled A Critical Analysis of the Warren Court. Would that be a violation of the Code of Conduct to do that?

A Do you want me to shoot from the hip, or do you want me to look through here? I would hope not. You know, it's improving the administration of justice, it sounds like to me. If the court -- and you're talking objective -- I mean, you're not zeroing in on any individual or any individual court -- well, I mean, or -- well, strike that. You really, the Warren Court, but you're not being -- I don't see any problem with that.

You know, I can't come up with what I want to say. I mean, if you start writing a book report critical of your fellow judges or Florida judges or judges you deal with, I can see problems. But when you get removed to the Warren court, I don't know if there's a distinction there or not.

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It would seem to me that then you're trying to improve the administration of justice.

And, again, you may agree or disagree with them, but it seems to me that you're within the framework of the improvement of the administration of justice. And even though I might disagree with your opinion, that's again where discretion comes in.

A judge must be given broad discretion when interpreting the Code of Judicial Conduct. I'm trying to find that. "A judge may engage in activities to improve the law, the legal system, and the administration of justice." It even say you may write and lecture and teach, public hearings, raise funds.

No, in those terms, I think it's -- I guess what I'm saying is, it's a case-by-case analysis. And in this case, I would see nothing wrong with it.

Q Would it surprise you to know that the committee unanimously said that would be unethical?

A Unethical to write about the Warren Commission?

Q To write a book report about a book called A Critical Analysis of the Warren Court.

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A Now, that is unduly restrictive of a judge's activities. But that isn't really the error here. The error in that opinion is that there's nothing that clearly states that is -- unless I'm missing something --

Q It's vagueness.

A Pardon?

Q It's vague. That's the problem.

A Well, that's right. And judges should be judged, just like everybody else, without vagueness. And who gets the benefit of the doubt? The defendant.

Q I mean, if they're going to take your job away from you --

A If a judge is going to be held accountable or a defendant is going to be held accountable or a party in suit is going to be held accountable, they must know -- it's a fundamental percept of our law -- they must know what it is they're not to do. And in this case, there's nothing in here that says to me clearly, "You shouldn't write an article critical of the Warren Commission."

Q The Warren court.

A The Warren court. Quite the contrary.

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The more I think about it -- it's one thing to be criticizing your own judges or your state judges, perhaps. But when you're criticizing a system that affects the whole administration of justice, I would hate to think the judges would be -- who better to comment on it? . . .

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Q Okay. You're a judge presiding over first appearances. It's a crowded courtroom. There's a defendant who is charged with stealing pornography and beating up police officers. He comes into court. And you adjourn court. And as you are walking back to your office, you see him standing just outside the open courtroom door, in the hallway, yelling at the top of his lungs, "I want a f-u-c-k-i-n-g lawyer."

Okay. You reconvene court. Your charge him with contempt of court, ask if the public has heard this, and find him in contempt of court, sentence him to jail. Do you believe that would be a violation of the Code of Judicial Conduct?

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A No. I would hope not. And that even assumes that I disagree or think that the judge was wrong. That is certainly within the framework of discretion, certainly. Now, we may disagree with what the judge did or the way in which he did it, but nobody should criticize a judge for taking that kind of action. That's for appellate review or for a rule later to come out, saying that it's inappropriate.

Q That's another thing I've been charged with.

A No. No. I mean, there are all sort of problems in there. I mean, is it direct or is that contempt and -- but those are matters, you know, within the broad discretion. I would hate to see a judge -- even though the judge acted wrongly, in my judgment, or even -- it's within the broad framework of discretion, and I think it's appropriate to say that we've got to view this in two ways.

There's appealable matters, and there's violations of the Code of Judicial Conduct. This seems to me a matter that ought to be handled on appeal and not as a violation of the Code of Judicial Conduct. I don't see where -- I mean, what's the standard? Must it be proved beyond and



to the exclusion of every reasonable doubt the judge should have know that this was wrong? If that's the standard, then clearly the judge is not wrong. Or is it reasonable suspicion? Still the judge is not wrong. What's the standard?

Q I don't know. I know I'm not going to let pornography thieves yell the F word through an open courthouse door. I know that.

A Well, I wouldn't have, either. And if, as a judge, we don't follow the proper procedure and we charge it as a direct when it's indirect, or it isn't considered contemptuous, or it comes within the framework of freedom of speech or what have you -- well, fine, reverse and send it back. But to say it's a violation of the Code of Judicial Conduct, I would say no. It would be a shame if it was.

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Q Okay. You're presiding over a violation

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of probation hearing. The defendant states that the reason he has violated his probation was that he didn't have a real job, a paycheck job. You place him back on probation, and you say, "Sir, I'm going to make it a condition of your probation that you get a real job, a paycheck job." Do you believe that would be a violation of the Code of Judicial Conduct?

A No, absolutely not.

Q This is another thing I've been charged with.

A Well, that's incredible. I mean, just assuming for the sake of argument the judge was wrong, I can't imagine that's a violation of the Code of Judicial Conduct, unless -- you know, there's nothing in here that says you can't make somebody go get a real job when obviously that's not in here. If they've hung their hat on something, they've hung their hat on something that's very vague, to say that's a violation. It may not be what we agree with or it may not be right, but it's certainly, I would hope, not a violation of the Code of Judicial Conduct. It's certainly a vague canon that they've hung their hat on.

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